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| <p>MHWS050001612025</p>  | <p><b><u>ORDER BELOW EXH. No.05 in RCS No. 23/2025</u></b></p> <p><b><u>(Ananta Nivrutti Bhure Vs. Gram Panchayat Jamb)</u></b></p> |
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1. Perused the application at Exh.05, say filed by defendant at Exh.13, documents on record and heard learned Advocate M. A. Khan for the applicant and learned Advocate V. A. Belokar for the non-applicant.
2. The applicant has filed present application under Order XXXIX Rules 1 and 2 of C.P.C. seeking temporary injunction restraining the non-applicant Gram Panchayat from disturbing his possession over house property No.1011/Plot No.22 and from acting upon notice dated 10.03.2025 till disposal of the suit.
3. It is the case of the applicant that Plot No.22 admeasuring 33 x 33 feet, situated at old Gaothan, Sonkhas, was allotted to him by Government in public auction for consideration of Rs.35,500/-. Possession was handed over to him by Tahsildar, Mangrulpir on 27.03.2004. It is further contended that said property is recorded in Gram Panchayat record as property No.1011 and he has constructed residential house thereon in the year 2020. According to him, no encroachment is made on public road or open space and the notice dated 10.03.2025 is issued only on false complaint of villagers.
4. The non-applicant Gram Panchayat resisted the application. It is contended that villagers made complaint dated 10.03.2025 alleging encroachment by applicant on Government road/open space near Buddha Vihar. Therefore, Gram Panchayat issued notice to applicant calling upon

him to produce documents such as building permission, sanctioned map and other papers. It is submitted that notice is only for preliminary enquiry and Gram Panchayat has legal authority to remove encroachment from public road/open space.

5. On the basis of rival contentions, following points arise for determination and my findings thereon are as under:

| Sr. No. | Points                                                                                                 | Findings              |
|---------|--------------------------------------------------------------------------------------------------------|-----------------------|
| 1       | Whether applicant proves that he has made out prima facie case?                                        | Partly in affirmative |
| 2       | Whether applicant proves that balance of convenience lies in his favour?                               | Partly in affirmative |
| 3       | Whether applicant proves that he would suffer irreparable loss if temporary injunction is not granted? | Partly in affirmative |
| 4       | What order?                                                                                            | As per final order    |

### **REASONS**

#### **AS TO POINT NOS. 1 to 3 :-**

6. The applicant has produced copy of Namuna-8 extract of Gram Panchayat, Jamb in respect of property No.1011. It shows name of applicant Ananta Nivrutti Bhure as owner and occupier of property admeasuring 33 x 33 feet i.e. 1089 sq. ft. The said extract is for the period 2016-17 to 2020-21. The applicant has also produced copy of auction proceedings, certificate issued by Tahsildar, possession receipt dated 27.03.2004, construction map, Gaothan certificate and no objection/building permission issued by Gram Panchayat. These documents prima facie show that Plot No.22/Property No.1011 is standing in the name and possession of the applicant.

7. However, the dispute is not merely about possession over Plot No.22. The grievance of Gram Panchayat is that applicant has allegedly made encroachment on Government road/open space adjoining the said plot. The notice dated 10.03.2025 shows that Gram Panchayat has only called upon applicant to submit documents and explanation regarding alleged encroachment and construction permission. Therefore, at this stage, it cannot be said that the Gram Panchayat has acted finally or illegally. Gram Panchayat is a local authority and it has statutory duty to protect public road, Government land and open space from encroachment.

8. The applicant has relied upon the judgment in *Parmar Gogji Kana Vs. Parmar Ganesh Moti* (second appeal No.949/1960 decided on 20/06/1967). The principle emerging from the said judgment is that person claiming right over open space must establish his legal right, and at the same time, passage or road cannot be obstructed. The applicant has also relied upon *Shri Deochand Danduji Karemore Vs. Divisional Commissioner, Nagpur and Others* (Writ Petition No.5348/2019 decided on 18/04/2022), wherein it is observed that Government authorities are duty bound to remove encroachment from Government land. Thus, both judgments show that lawful possession deserves protection, but no person can claim injunction to protect encroachment over public road or Government land.

9. In the present case, applicant has prima facie shown possession over property No.1011/Plot No.22. But he has not placed any conclusive material to show that the alleged open space/road portion is also part of his private property. Whether applicant has actually encroached upon public road/open space or not is a matter of evidence and may also require measurement by competent authority. Therefore, blanket

injunction restraining Gram Panchayat from acting upon notice dated 10.03.2025 cannot be granted.

10. At the same time, the applicant is residing in the constructed house and if without following due process of law the construction standing on Plot No.22 is demolished, he would suffer irreparable loss. Therefore, limited protection is necessary to protect his lawful possession over property No.1011/Plot No.22. Balance of convenience also lies in granting limited injunction, without preventing Gram Panchayat from conducting enquiry and taking action as per law.

11. Hence, applicant has proved prima facie case, balance of convenience and irreparable loss only to the extent of protection of his lawful possession over Plot No.22/Property No.1011. Accordingly, point Nos.1 to 3 are answered partly in affirmative.

**AS TO POINT NOS. 4 :-**

12. In view of above discussion and point Nos. 1 to 3. Hence, I proceed to pass following order.

**ORDER**

1. Application Exh.05 is partly allowed.
2. The non-applicant Gram Panchayat, its officers, servants or any person acting through it are hereby restrained from disturbing the lawful possession of the applicant over Gram Panchayat Property No.1011/Plot No.22, Mouza Sonkhas, admeasuring 33 x 33 feet, otherwise than by due process of law, till disposal of the suit.

3. The non-applicant Gram Panchayat is at liberty to proceed with enquiry pursuant to notice dated 10.03.2025, to conduct spot inspection/measurement through competent authority and to take action regarding alleged encroachment on public road/open space strictly in accordance with law after giving opportunity of hearing to the applicant.
4. The applicant shall not make any further construction, extension or obstruction on the alleged public road/open space during pendency of the suit.
5. No order as to costs.

Date : 23/07/2026

**(Khwaja.C. Kalal)**  
Jt. Civil Judge Jr.Division, Mangrulpir,  
Tal. Mangrulpir, Dist. Washim.

**CERTIFICATE**

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

|                                                      |    |                                                                     |
|------------------------------------------------------|----|---------------------------------------------------------------------|
| Name of Court                                        | :- | Jt. Civil Judge (Jr.Dn.) and J.M.F.C.,<br>Mangrulpir, Dist. Washim. |
| Presiding Officer                                    | :- | Khwaja C. Kalal                                                     |
| Judgment/Order uploaded by                           | :- | Shri. S. S. Rathod (Jr. Clerk)                                      |
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