

ORDER BELOW EXH. 5

(Passed on this 20th April, 2017)

1] The present application under Order 39 Rule 1 and 2 r/w Section 151 of the Code of Civil Procedure Code is filed by plaintiff/applicant thereby seeking relief of temporary injunction restraining the defendants/non-applicant no.1 and 2 from digging ditch of latrine on open space in front of house of applicant/plaintiff till disposal of the suit.

2] In short plaintiff/applicants' case is as follows -

It is the contention of applicant/plaintiff that defendants/non-applicant no. 1 and 2, who are adjoining plot owners, have previously encroached on government land No. 119 and 122 of Nazul Sheet No.17-D and now they are trying to further encroach on open space in front of house of applicant/plaintiff and thereby they are closing the way of ingress and egress of his house. The defendants/non-applicant no. 1 and 2 are illegally without having any sanction and without having any prior permission of construction, digging the ditch of latrine on the open space. It is further contention of applicant/plaintiff that if the defendants/non-applicant no.1 and 2 continued their encroachment and illegal construction, then his way to his house will be obstructed and closed. With this, submission the plaintiff/ applicant prayed for temporary injunction thereby restraining defendants/non-applicant no.1 and 2 from digging ditch of latrine on open space in front of house of applicant/plaintiff till disposal of the suit.

3] At the time of first hearing, this court after prima-facie considering material on record passed order of ex-parte ad-interim temporary injunction

thereby restrained defendants/non-applicant no. 1 and 2 from further constructing on open space in front of the house of plaintiff/applicant. The said order is in force till today. This court also issued show cause notice to defendants/ non-applicant no 1 and 2 as to why said order should not be confirmed.

4] In response to said notice, defendants no. 1 and 2 appeared before the court and filed their reply below exh. 19. They denied all adverse allegations made against them. They submitted that father of defendants no. 1 namely Ghasi Nanda Garve was possessor of government land plot no. 119 and 122 situated in Nazul Sheet No. 17-D having property no. 260 and 261. There was constructed house on the said land and the defendants are regularly paying the Municipal taxes of the same.

5] The defendants/non-applicant no.1 and 2 further submitted that the way of ingress and egress of the plaintiff is from the eastern side. But, in the month of May-2016, the plaintiff erected tin shade on the government land situated adjacent to his plot no. 123 and illegally open one door from the western side. The defendants have made complaint of said illegal act to Municipal Council, Karanja, who have also issued notice to the plaintiff in that respect. But, the plaintiff has not removed his said encroachment. The defendants further submitted that they are constructing their latrine on their own land of plot no. 119 and 122, under the government scheme of "Swatch-Bharat Abhiyan" run by Municipal Council, Karanja. They have dig the ditch of latrine on their own land. With these, the defendants no. 1 and 2 prayed for rejection of temporary injunction application.

6] The defendants no. 3 Municipal Council have also filed their written statement on record vide exh.23. They denied all the contention of

plaintiff for want of knowledge. They submitted that under the scheme of “Swatch Bharat Abhiyan”, the construction of latrine in every house is going on and the Government is providing subsidy for the same through Municipal Council Karanja. That under the said scheme, the defendants filed application with the Municipal Council Karanja. However, so far, no subsidy is paid by this defendants nor the permission to construct latrine is granted to the defendants. They submitted to dismiss the suit of plaintiff with cost.

7] Heard, learned advocates for both the sides. Also perused the record. The following points arose for my determination. I have recorded my findings against each of them for the reasons given below.

<u>Points</u>	<u>Findings</u>
1. Whether prima facie case exists in favour of plaintiff/applicant?	In the affirmative
2. Whether balance of convenience lies in favour of plaintiff/applicant?	In the affirmative
3. Whether irreparable loss will be caused to the plaintiff/applicant if application for temporary injunction is rejected ?	In the affirmative
4. What Order ?	As per final order.

Reasoning

As to point no.1 to 4:-

8] It is specific contention of plaintiff/applicant that defendants/non-applicant no 1 and 2 have started their construction of latrine on the open space in front of house of plaintiff/applicant and thereby they are closing his

western side way of ingress and egress of his house. On the contrary the contention of defendants are that their construction is on their own plot no. 119 and 122 and there is no way of the plaintiff/applicant from the western side of their house.

9] It is seen that ownership of plaintiff/applicant over plot no. 123 is prima-facie not disputed in the matter. The plaintiff/applicant has also filed document at serial no. 1 alongwith list of document exh. 4 i. e. property card of plot no.123 ,showing name of plaintiff as owner of said plot. It is also admitted fact that land of plot no. 119 and 122 is government land and at present it is in possession of defendants/non-applicant no. 1 and 2. It is further seen that though defendants are possessors of said plots, their said right is neither regularized or recognized by the government. Thus, the defendants no. 1 and 2 prima-facie cannot claim right of ownership over the said plots.

10] Though the defendants/ non-applicant no 1 and 2 have come up with the case that plaintiff was having no way from western side of his house, but they themselves contended that in the month of May-2016, the plaintiff has illegally affixed door from western side and created new way from said western side. Thus, prima facie it is also establish that there is also opening from western side of plaintiff's house.

11] The plaintiff/applicant has filed revenue Map at Serial no.5 vide list of document Exh. 4. Prima-facie said map shows that there is one North-South public road towards western side of plot no. 123. It further reveals from the said map that there is open space in front of plot no. 123 from said western side, which is exactly in between North-South road and plot no. 123. The plaintiff/applicant has also filed one rough unscale sketch map showing

location on spot. It is the contention of plaintiff that construction of defendants/non-applicant no. 1 and 2 of their latrine is on the open government land situated in front of his house from the western side.

12] It is seen that defendants/non-applicant no.1 and 2 have contended that their construction of latrine is on the plot no. 119 and 122 possessed by them. But they have neither filed any map showing exact location of said construction nor concretely stated that the said construction is within their existing house situated on their own plots. As the open government land is situated in between the house of plaintiff on plot no. 123 and western side North-South road, the said open government land is the only way for the plaintiff/applicant to approach the said north-South road from western side of his house.

13] The photographs filed by the plaintiff/applicant on record vide list of document exh. 4 goes to show that the alleged construction of defendants/ non-applicant no 1 and 2 is on the open government land and not within their house situated on plot no. 119 and 122. Thus, prima-facie said construction of latrine appears to be obstructing the way of plaintiff as contended by him.

14] The defendants/ non-applicant no.1 and 2 have come-up with the case that their construction of latrine is under government scheme "Swatch Bharat Abhiyan" and approved by Municipal council, Karanja and hence no temporary injunction can be granted to their said approved construction. The document filed by both the sides prima-facie shows that Municipal Council, Karanja have now approved the proposal of construction of latrine in the house of defendants no. 1 and 2 under "Swatch Bharat Abhiyan". But at the time of filing of the suit, no permission as per Municipal bye-laws with sanction Map

was granted to the defendants no. 1 and 2.

15] Infact, the defendants no. 1 and 2 have till today not filed any construction sanction order alongwith sanction map approved by Municipal Council Karanja on record. The defendants/non-applicant no. 1 and 2 vide list of document exh. 36 filed one letter dated 05/04/2017 issued by Municipal Council, Karanja and contended that said letter is nothing but permission/approval granted by Municipal Council, Karanja to their construction.

16] Firstly such informal letter without having any sanction Map cannot be said to be sanction to the proposed construction as per Municipal bye-laws. It is seen from the contents of said letter that, same is only approval to construct a latrine in the house of defendants no. 1 and 2 under “Swatch Bharat Abhiyan” It is not made clear in the letter that no further approval or sanction or filling of map of construction will be necessary as per Municipal bye-laws before construction of latrine as mentioned in said letter. Thus, the said informal letter issued by Municipal Council, Karanja will not dispense with the necessity to obtain necessary required sanction by filing map of proposed construction as per Municipal bye-laws. In any case the said letter dt. 05/04/2017, only permit the defendants/non-applicant no. 1 and 2 construct latrine on their own land and not on the open government land.

17] Hence for all the aforesaid reasons, prima-facie construction of alleged latrine undertaken by defendants/non-applicant no.1 and 2 appears to be without having any sanction plan as stated earlier. The said construction appears to be on open government land which will obstruct the way of plaintiff/applicant to approach the public road. Hence, I am of the opinion that prima-facie case appears to be in favour of plaintiff/applicant rather than in

favour of defendants/ non-applicant no 1 and 2. If defendants/non-applicant no. 1 and 2 will be permitted to complete their construction without finally deciding right and disputed questions raised by plaintiff/applicant, then irreparable loss will be cause to the plaintiff/applicant. The balance of convenience also lies in favour of plaintiff/applicant. Hence, I am giving my findings to point no. 1 to 3 in affirmative and in response to point no. 4, I held that the earlier order of Temporary Injunction granted in favour of plaintiff/applicant needs to be confirmed. Hence, following order:-

ORDER

- 1] The Temporary Injunction application (exh.5) is hereby allowed and ad-interim Temporary Injunction order dated 27-01-2017 is hereby confirmed.
- 2] The defendants / non applicant no. 1 and 2 are hereby restrained from further constructing on open space in front of the house of plaintiff/applicant, more particularly described in application para No.2 till disposal of the suit.
- 3] Cost to follow the event.

Date :- 20/04/2017

(R.R.Lohiya)
Civil Judge, J.D.,Karanja

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 Stenographer	:	D.B. Lachure
Court Name	:	Civil Judge (JD) &JMFC, Karanja.
Date	:	20/04/2017
Order signed by the Presiding Officer on	:	20/04/2017
Order uploaded on	:	24/04/2017