



01. This is an application under order XXXIX Rule 1 and 2 of Code of Civil Procedure, 1908 for restraining the defendants from demolishing the suit property and from obstruction and interference in their peaceful possession over the suit property. Suit property is as follows:-

Towards East :- House Kailas Pundalik Landkar
Towards West :- Plot of Ramkrishna Raghoji Landkar
Towards South :- Land of Bhagwat Landkar
Towards North :- Land of plaintiff

Contention of the Plaintiff :-

02. The suit property is the ancestral property of the plaintiff. On 03.10.2022, the plaintiff has filed an application for construction permission. The defendants have not granted the permission. Therefore, it is a deemed permission as per Maharashtra Village Panchayat Act, 1959. (**Hereinafter referred as “the Act”**) Thereafter, the plaintiff had started construction over the suit property. In December-2022, defendant No.2 is elected as a Sarpanch of Gram Panchayat. Due to politically rivalry, defendants have issued the notice for stopping the construction. On 26.04.2023 defendants have again issued the notice for demolition. On 27.04.2023, plaintiff has sent a reply to the notice. The Gram Panchayat, Borgaon has passed the resolution for demolishing the construction over the suit property. Despite the deemed sanction, defendants have intentionally

issued a notice. Hence, this application.

Averments of the Defendants :-

03. It is the averments of the defendants that, the case of the plaintiff is based on the Form No.8-A, which is not the document of title. It is for fiscal purpose. The plaintiff has never filed an application for construction permission. There is no sanction map filed alongwith construction permission. Plaintiff has not come with clean hands. Hence, prayed to reject the application.

04. Heard both sides. Considering the application, say and rival submissions of parties, the following points arise for my determination and I record my finding thereon for the reasons given below :-

<u>Sr.No</u>	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether the plaintiffs have made out a <i>prima-facie</i> case in their favour ?	No.
2	Whether balance of convenience tilts in favour of the plaintiffs ?	Does not survive.
3	Whether the plaintiffs will suffer irreparable loss in the event of refusal of injunction application ?	Does not survive.
4	What order ?	Application is Rejected.

REASONS

Documents :-

05. Plaintiff has filed Village Namuna No.8, Tax Receipt, Application dated 03.10.2022, Notice issued by the Gram Panchayat dated 23.03.2023, Notice issued by the Gram Panchayat dated 26.04.2023, Reply to the notice on dated 26.04.2023, Notice issued by the Gram Panchayat dated 06.05.2023, Resolution passed by the Gram Panchayat, Affidavit of one Vasanta Ashruji Landkar.

06. Defendants have filed letter issued secretary of Gram Panchayat Borgaon, copy of proceeding book, certificate issued by the Election Commission, copy of proceeding book.

Submissions :-

07. The Ld. Advocate for the plaintiff submitted that, the suit property is the ancestral property of the plaintiff. In the notice issued by the Gram Panchayat, it is the clear intention of the Gram Panchayat that they want to demolish the building. The true intention behind the notice under Section 52 is only to impose the fine. The Namuna No.8-A shows it is the private land. The plaintiff has his own house over the suit property since long. He is the regular tax payer of the suit property. Gram Panchayat has to apply sub-section 4 of the Section 52 and thereafter sub-section 5 of the Section 52. Section 52 should be construed liberally. The resolution passed by the Gram Panchayat is the threat to the plaintiff. According to sub-section (5) of Section 52 of the Act, notice must be not less than thirty days. After the notice, within thirty days Gram Panchayat passed an resolution. According to the defendants, application dated 03.10.2022 is not reached to the Gram Panchayat. Whether the application has reached to the Gram Panchayat or not is the part of trial. Though the application is not having seal then of does not mean it was not received by the Gram Panchayat for consideration. At this juncture, the threat is the sufficient. Defendants have not communicated the permission within sixty days. Thus, it is a deemed permission. Prima facie , plaintiff is owner of the suit property. Gram Panchayat issued the Village Namuna No.8-A. The.Ld. Advocate also relied on the Maharashtra Village Panchayat Tax and Fee Rule, 1960.

If injunction is not granted then plaintiff will suffer irreparable loss and the balance of convenience tilts in favour of the plaintiff. Further, if the plaintiff fails to establish his case in trial then plaintiff will suffer. In such circumstances, defendants have right to demolish the suit property. At this juncture, the construction of the plaintiff needs to be protected. Hence, prayed to grant injunction.

08. The Ld. Advocate for the defendants submitted that, as per Section 52 of the Act, whenever there is deemed permission, there must be an application by the applicant. There is a procedure to file an application for construction permission. The application dated 03.10.2022 does not show the seal and signature of the authorized person of Gram Panchayat. The person namely the Nakhate was not employee of the Gram Panchayat when the alleged application has been filed. If without such permission anybody has constructed over his land and then apply for injunction then it would be a fashion that there is no necessity of previous permission. The plaintiff under the garb of previous permission wants to hide his mistakes. It is the mandatory to get the permission before the construction. Therefore, there is no deemed permission. Hence, in such circumstances prayed to reject the application.

AS TO POINT NO.1 :-

09. Before proceeding, it is necessary to advert Section 52 of the Maharashtra Village Panchayat Act. Section 52 of the Act reads as follows :-

52. (1) No person shall erect or re-erect, or commence to erect or re-erect within the limits of the village, any building without the previous premission of the panchayat. Such permission may

be granted with or without conditions or may be refused.

(2) Permission shall be presumed to have been granted if the panchayat fails to communicate its permission or refusal in respect thereof within two months from the date of receipt of the application for permission. In a case of refusal or in case of permission being granted subject to conditions, the panchayat shall communicate to the applicant the reason thereof ; and an appeal shall lie against any such order of refusal or of conditional permission to the Standing Committee within a period of thirty days from the date of communication of such order.

(3) No person who becomes entitled under sub-section (1) or (2) to proceed with any intended work of erection or re-erection shall commence such work after the expiry of one year from the date on which he became entitled so to proceed therewith, unless he shall have again become so entitled by a fresh compliance with the provisions of the preceding sub-sections.

(4) Whoever erect or re-erects, or commences to erect or re-erect any building without such permission or in any manner contrary to the provisions of sub-section (1) or any by-law in force, or to any conditions imposed by the panchayat shall be punished with fine, or to any conditions imposed by the panchayat shall be punished with fine, which may extend to fifty rupees ; and in the case of a continuing contravention, he shall be liable to an additional fine which may extend to five rupees for each day during which such contravention continues after conviction for the first such contravention.

(5) Without prejudice to the penalty prescribed in sub-section (4) the panchayat may,—

- (a) direct that the erection or re-erection be stopped ;
- (b) by written notice require such erection or re-erection to be altered or demolished as it may deem necessary ;

and if the requirement under clause (b) is not complied with within the time fixed in the notice (such time being not less than thirty days), the panchayat may cause the alteration or demolition to be carried out by its officers and servants and all the expenses incurred by the panchayat therefore, shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under Chapter IX.

6) Nothing contained in this section shall apply to any building which is used or required for public service, or for any public purpose, and is the property of the State or Central Government or any local authority, or is to be erected or re-erected by the State or Central Government or the local authority ; but reasonable notice of the proposed construction shall be caused to be given to the panchayat, and the objections or suggestions of the Panchayat, if any, shall be considered. Nothing in this section shall also apply to any building erected or re-erected for any industrial or commercial purpose.

Explanation.—The expression “ erect ” or “ re-erect ” with reference to a building in this section, includes—

- (a) any material alteration, or enlargement of or in any building ;
- (b) the conversion by structural alteration into a place for human habitation of any building not originally constructed for human habitation ;
- (c) such alteration of a building as would effect a change in the drainage or sanitary arrangement or materially affect its security ;
- (d) the addition of any rooms, buildings, outhouses or other structures to any building ;
- (e) the conversion by any structural alteration, into a place of religious worship or into a sacred building of any place or building not originally meant or constructed for such purpose ;
- (f) roofing or covering an open space between walls and buildings, as regards the structure which is formed by roofing or covering such space ;
- (g) conversion into a stall, shop, warehouse, or godown of any building not originally constructed for use as such or vice-versa ;
- (h) construction in a wall adjoining any street or land not vested in the owner of the wall, of a door opening on such street or land.

10. The case of the plaintiff is based on the deemed permission. The first question is whether on 03.10.2022, the plaintiff has filed application for permission to construct the house over the

suit property. Undoubtedly, as the village Namuna No.8-A is filed on record, it is the property of the plaintiff. On perusal of application dated 03.10.2022, it shows there is a signature of the one person namely Nakhate. The Ld. Advocate for the defendants shown one document which is letter of secretary of Gram Panchayat, Borgaon who submitted that the person Suresh Keshav Nakhate was a temporary employee of the Gram Panchayat appointed from 30.03.2022. He was not a permanent employee. His employment period ended on 30.09.2022. It shows that on 03.10.2022 he was not in service of defendant Gram Panchayat. There is also one resolution dated 24.12.2022 regarding the opening of the new account of employee Suresh Nakhate as he became the permanent employee of Gram Panchayat. Lateron, the said resolution dated 24.12.2022 has been cancelled by newly elected members of Grma Panchayat by the resolution dated 27.05.2023. The Ld. Advocate for the plaintiff filed the affidavit of one Vasanta Ashruji Landkar, who has stated in his affidavit that, the application filed by the plaintiff has been accepted by Suresh Nakhate and he himself directed to the secretary for necessary action on this application. It is worth to mention here that said Vasanta Ashruji Landkar was the Sarpanch, when the resolution dated 24.12.2022 has been passed which is subsequently cancelled.

11. It is pertinent to note that, there is no such endorsement or seal of the Gram Panchayat on the application dated 03.10.2022. If the application is not filed before the Gram Panchayat then obviously there is no action from Gram Panchayat to grant the permission to the plaintiff. Plaintiff to get the benefit of deemed permission has to show that he has applied according to law. The

authorised person has to receive the application and forwarded the same to the concern department. If thereafter also, the Gram Pananchayat has not taken any action within sixty days then plaintiff need not to wait further. It is the deemed permission. Plaintiff fails to show the same. The plaintiff has not come with clean hands. In this case, the conduct of the plaintiff is also relevant factor for the relief of injunction. It is settled law that, a person who seeks equity must do equity. He must act in a fair and equitable manner. He must come with clean hand before the Court. The person who does not come with clean hand is not entitled to the discretionary relief. The Hon'ble Supreme Court also in the landmark judgment of case of **Gujarat Bottling Co. Ltd. Vs. Coca Cola Co., (1995) 5 SCC 545**, it was held that :-

“47. Under Order XXXIX of the Code of Civil Procedure, 1908, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest”

Thus, the plaintiff is unfair and his allegation in the case are at fault. The Court cannot grant the injunction unless the plaintiff shows that he has filed an application according to law to a proper authorised person. When the plaintiff has not come with clean hands

then he is not entitled for the relief of injunction. The plaintiff fails to prove that he has filed an application before the Gram Panchayat, Borgaon for construction permission.

12. The Section 52 subsection (4) and 52 subsection (5) of the Act speaks about the powers given to the authority. As per Section 52 subsection (4) of the Act, gives the power to impose the fine. It is also the argument advanced by the Ld. Advocate for the plaintiff, even it is presumed for the sake of argument that it is the unauthorised construction then the Gram Pnachayat has power to impose the fine. Considering the submission, once again perused the notices wherein the Gram Panchayat has submitted for depositing the fine amount. But the plaintiff did not pay the fine amount. According to Section 52 of subsection (5) of the Act, the Gram Panchayat has given the additional power to issue notice for stopping the construction and for demolition. If the notice is for the demolition then time limit must not be less than thirty days. Defendants have issued notices dated 26.04.2023 and 06.05.2023. The same shows the sufficient time has given to the plaintiff. However, plaintiff neither paid fine nor stopped the construction.

13. The term *prima facie* case means a case which involves a fair and substantial question to be tried. If there is no apparent defect in the plaintiffs case leading to its failure at this stage, it is in the ambit of the expression *prima facie* case. A *prima facie* case does not mean a case proved in its entirety but a case which can be said to be established if the evidence which is led in support of the same were believed. A triable issue is the crux of the expression *prima*

facie case. In this case, the fair and substantial question is whether there is deemed permission or not? Prima facie, plaintiff fails to show whether he has applied for sanction. It is the apparent defect in plaintiff's case. Hence, in such circumstances, even if the evidence is led in support of the case then also it does not come within the ambit of prima facie case. Prima facie, plaintiff fails to establish the case for the trial. Hence, I answer to point No.1 in negative.

AS TO POINT NOS. 2 & 3 :-

14. Having answered to point No.1 in negative, the other two factor need not to considered. In view of the judgement of the Hon'ble High Court of Bombay in the case of **Bhavna Vs. Navneet, Reported In 2015(3)MHLJ 472** assumes importance. In para No.08 therein, his Lordships has observed that :-

“Once the prima-facie case is not established, the further aspects as to balance convenience and irreparable loss are immaterial and they need not be considered.”

In this view of the matter, point Nos.2 and 3 does not survive and are answered accordingly.

15. In this backdrop and in answer to point No.4, the following order is passed.

ORDER

1. Application is rejected.
2. Costs will abide the main cause.
(Dictated and pronounced in the open Court)

Place : Malegaon
Date: 19.03.2024.

[Pravin U. Kulkarni]
Jt. Civil Judge (J.D.) Malegaon
Dist. Wahim.

CERTIFICATE

I affirm that the contents of this P.D.F file Order is same word to word, as per the original Order.

Name of Stenographer : **Shivam B. Patange (L.G.)**

Name of Court : P.U.Kulkarni
Jt. C.J.J.D. and J.M.F.C., Malegaon.

Date of the Order : 19.03.2024

Order Signed by : **21.03.2024**

Presiding Officer on

Order Uploaded on : 21.03.2024