



01. By filling this application, plaintiff craving the injunction to restrain the defendant from creating obstruction and interference in peaceful possession of his canteen admeasuring 8X10 feet till the disposal of the suit. The canteen is situated in the premises of Panchayat Samiti Office.

02. Plaintiff is running the canteen in the premises of Panchayat Samiti. His brother is junior clerk in Panchayat Samiti, Malegaon. He has helped to the plaintiff to start the canteen in the premises of panchayat samiti. The plaintiff since last twenty years running the canteen. He has never breached any rules of the Panchayat Samiti. He has deposited Rs.30,000/- (Thirty Thousand Rupees only) and also paying monthly rent. In January-2018,the Panchayat Samiti has been transferred in a new building. The Block Development Officer, Panchayat Samiti has asked him to erect the tin shed in the premises of Panchayat Samiti. From last three years, his brother namely Baban Ghuge is making pressure on Block Development Officer to eject the canteen from premises of panchayat Samiti. On the say of his brother the Panchayat Samiti has issued notice to remove the canteen from the premises of the Panchayat Samiti. Thus, this application.

03. Application is proceeded without say of the defendant.

04. Heard, Ld. Advocate for the plaintiff. He submitted as per the application.

05. Considering the plaint and argument, 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 :-

06. The plaintiff has filed the notices issued by the Block Development Officer, Malegaon dated 29.08.2018 and 05.09.2018, his reply to both notices, photographs of his canteen.

#### AS TO POINT NO.1 :-

07. On perusal of pleading it appears that, the Panchayat Samiti has given oral permission to run the canteen in the premises of the Panchayat Samiti. It is admitted fact that, the canteen has been erected over the government land. Further, there is also contention of the plaintiff that, he is paying the rent to the Panchayat Samiti. Nothing is on record in support of his contentions.

08. Moreover, the plaintiff is claiming his possession over the

Government land. The notice issued by the Panchayat Samiti shows it is the illegal possession over the Government land. There is no record which shows that, he is running the canteen in the premises of the old Panchayat Samiti and thereafter in a new Panchayat Samiti. Sufficient time is also given to the plaintiff to remove his canteen. The defendant has lawfully issued the notices to the plaintiff. The defendant has availed the lawful remedy.

09. If the plaintiff is claiming that he has got possession of canteen in old Panchayat Samiti office, after the procedure established by law, then also there is no document placed on record. Further if there is no document about it then he is claiming the adverse possession over the government land. Plaintiff is claiming adverse possession over the suit property. The Hon'ble Supreme Court in the case of **Government of Kerala and Another Vs. Joseph And Another, Reported In 2023 Live Law (SC) 621**, wherein it was held that :-

*“Merely long period of possession, does not translate into the right of adverse possession. Surmises, conjectures and approximations cannot serve the basis for taking away the right over land resting with the state and place the said bundle of rights in the hands of one who did not have any such rights”.*

Further it has been also held that,

*“when the land of proceedings wherein adverse possession has been claimed, belongs to the Government, the Court is duty-bound to act with greater seriousness, effectiveness, care and circumspection as it may lead to destruction of a right/title of the State to immovable property”.*

10. In the present case, the plaintiff is claiming the possession over the suit property from 2018 and in a old Chatoyancy

Samite from last 22 years. But, no document is placed on record which shows his possession is legal. There is no reason to believe that Panchayat Samite has asked him to erect the canteen near new Panchayat Samite Office. In such circumstances, *prima-facie* the plaintiff is not entitled for relief of protection. *Prima-facie* the plaintiff has not shown his lawful possession with permission of the Panchayat Samiti. Hence, I answer to point No.1 in negative.

**AS TO POINT NOS. 2 & 3 :-**

11. 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.

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

**ORDER**

1. Application is hereby rejected.
2. No order as to costs.  
(Dictated and pronounced in the open Court)

Place : Malegaon  
Date: 05.04.2024.

**[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 : 05.04.2024

Order Signed by : 10.04.2024

Presiding Officer on

Order Uploaded on : 10.04.2024