



ORDER BELOW EXH.5.
(CNR No.MHWS110012972025)
**Nitesh Ramesh Gavhane & Anr. Vs. State of
Maharashtra Through Collector, Washim & Ors.**

Present application has been filed by the plaintiffs/applicants under Order XXXIX Rules 1 & 2 r/w. Section 151 of the Code of Civil Procedure, 1908 for the relief of temporary injunction against defendant No.5 i.e. Chief Officer, Municipal Council, Karanja Lad thereby restraining him from causing any obstruction to the legal construction existing on their suit properties and also restraining him from removing said legal construction of plaintiffs existing upon their suit properties as described in detail in Para No.1 of the plaint till final decision of the suit.

2) Perused application, say of defendant No.5 at **Exh.33**, say of defendant No.6 at **Exh.30** and documents filed on record by plaintiffs and defendant Nos.5 and 6. Also heard learned advocate for plaintiffs and learned advocate for defendant Nos.5 and 6 at length.

3) Ld. advocate for plaintiffs has submitted that plaintiffs are owners and possessors of their respective suit properties as described in para No.1 of the plaint. Plaintiff No.1 has purchased his suit property i.e. **plot No.81/2** admeasuring 1051.68 Sq. Ft. from one Suresh Shantinath Indane vide registered sale deed dated 25/03/2019 for total consideration amount of

Rs.4,20,000/-. His name has also been legally recorded in the records of Municipal Council, Karanja Lad being its owner and thereafter, plaintiff No.1 has also done construction upon his suit property by taking due construction permission from Municipal Council, Karanja Lad on 16/06/2021.

4) Ld. advocate for plaintiffs has further submitted that similarly, plaintiff No.2 has also received his suit property i.e. **plot No.82** admeasuring 866 Sq. Ft. from his father Manohar Parshram Dakhore vide registered gift deed dated 22/12/2016. In fact, the father of plaintiff No.2 namely Manohar Parshram Dakhore and the uncle of plaintiff No.2 namely Nagorao Parshram Dakhore had purchased total property in plot No.82 out of Sheet No.33/A vide registered sale deed dated 14/06/1956 from one Sau. Gangubai Vitthalrao Joshi. The construction of house of plaintiff No.2 upon his suit property is in existence since long as it was and he has made no new construction upon his suit property as alleged by defendant Nos.5 and 6.

5) Ld. advocate for plaintiffs has further submitted that plaintiffs have not made any construction by making encroachment upon the Government land or Government road as alleged by defendant Nos.5 and 6. Moreover, no public road having 15 feet width was in existence towards the Southern side of suit properties of plaintiffs as alleged by the defendant Nos.5 and 6 and therefore, the question of making encroachment upon said public road by the plaintiffs does not arise at all. In fact, only service lane was in existence towards the Southern side of the

plaintiffs and the same had never been used by any person as public road as alleged by the defendant Nos.5 and 6.

6) Ld. advocate for plaintiffs has further submitted that this being so, the defendant No.5 on the basis of false complaint filed by defendant No.6 regarding alleged encroachment upon the so called public road having been made by the plaintiffs, issued illegal notices dated 04/03/2024 to the plaintiffs under Section 53(1) of Maharashtra Regional and Town Planning Act, 1966 thereby warning them to remove alleged encroachment immediately. However, the plaintiffs have never made any encroachment upon the Government land or public road as alleged by the defendant Nos.5 and 6. As such, defendant Nos.5 and 6 have no concern with the suit properties of plaintiffs. Not only this, house property adjoining to the Southern side of plaintiffs' suit properties is not owned by defendant No.6 and therefore, he has no locus standi to make any complaint regarding alleged encroachment upon the so called public road.

7) Learned advocate for plaintiffs has further submitted that from the above facts, therefore, it is necessary to protect legal construction of plaintiffs existing upon their respective suit properties from being illegally removed by defendant No.5 i.e. Chief Officer, Municipal Council, Karanja Lad under the guise of encroachment having been made by plaintiffs upon so called public road as alleged by defendant Nos.5 and 6 by passing an order of temporary injunction against defendant No.5. As such, plaintiffs have been constrained to file present suit along with

present application for temporary injunction against defendants. It is further submitted that plaintiffs have prima facie case and balance of convenience also lies in favour of plaintiffs. Irreparable loss will be caused to plaintiffs, if present application is rejected as compared to defendants. Hence, learned advocate for plaintiffs has prayed for grant of this application.

8) On the contrary, learned advocates for defendant Nos.5 and 6 have strongly objected present application on the ground that the plaintiffs have filed present false suit along with present false application for temporary injunction. It is further submitted that the plaintiffs have not come before the Court with clean hands to seek equitable and discretionary relief of temporary injunction. The plaintiffs have suppressed material facts from the Court while describing the suit properties in their plaint. Moreover, the plaintiffs have deliberately shown false and wrong four boundaries of their suit properties in the plaint.

9) Learned advocates for defendant Nos.5 and 6 have further submitted that the plaintiffs have deliberately shown the house/mansion of Ghude (घुडे यांचा वाडा) towards the Southern side of their suit properties while mentioning four boundaries of their suit properties in plaint. However, there is a plot No.83 which is a Government road adjoining towards the Southern side of suit properties of plaintiffs and said Government road is situated in between the suit properties of plaintiffs and plot No.87 which is belonging to defendant No.6. As such, the plaintiffs have falsely mentioned four boundaries of their suit properties in the plaint in

order to grab Government land by making encroachment thereon. Not only this, plaintiffs have also made encroachment upon said Government road by making construction of bathroom and toilets without the permission of defendant No.5 i.e. Municipal Council, Karanja Lad.

10) Learned advocates for defendant No.6 has further submitted that the plaintiffs having been made encroachment upon the Government road can not seek relief of temporary injunction from the Court against defendant No.5 i.e. Municipal Council, Karanja Lad in order to protect their illegal encroachment and possession in absence of any legal right existing in their favour to claim such relief of temporary injunction. In support of his above submission, learned advocate for defendant No.6 has particularly relied upon the judgment of the Hon'ble Bombay High Court in the case of **Municipal Council, Pusad Vs. Kundanlal Mohanlal Jaiswal and Others reported in 2007 (3) ALL MR 86**. As such, the plaintiffs have filed instant suit against the defendants without any cause of action on the false and baseless grounds. Thus, the plaintiffs have no prima-facie case. No balance of convenience lies in favour of plaintiffs. Moreover, no irreparable loss will be caused to the plaintiffs if present application for temporary injunction came to be rejected. Hence, learned advocates for defendant Nos.5 and 6 have prayed for rejection of present application with heavy costs.

11) In view of above submissions of learned advocates for plaintiffs and defendant Nos.5 and 6, following points arise for my

determination and I have recorded my findings thereon for the reasons discussed below.

Sr.No.	Points	Findings
1)	Whether plaintiffs/applicants are having prima-facie case ?	In the negative.
2)	Whether balance of convenience lies in favour of plaintiffs/applicants ?	In the negative.
3)	Whether irreparable loss would be caused to plaintiffs/applicants 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 :

12) It is pertinent to note here that plaintiffs are seeking temporary injunction against the defendants more particularly against defendant No.5 i.e. Chief Officer, Municipal Council, Karanja Lad thereby praying for restraining him from removing their so called illegal construction upon their suit properties under the guise of encroachment. It is to be noted here that when a party comes to the Court to seek equitable and discretionary relief of temporary injunction then it is legally expected from such party that he or she should come before the Court with clean hands without suppressing anything which is material from the Court.

13) It is further pertinent to note here that the plaintiffs have clearly mentioned in their plaint while mentioning four

boundaries of their suit properties that there is a house/mansion of Ghude (घुडे यांचा वाडा) towards the Southern side of their suit properties. However, there is a plot No.83 which is a Government road adjoining towards the Southern side of suit properties of plaintiffs and said Government road is situated in between the suit properties of plaintiffs and plot No.87 which is belonging to defendant No.6. Said fact becomes more clear from the documents i.e. measurement map of plot No.83 belonging to Government and village map of Karanja Lad filed by the plaintiffs themselves on record. Not only this, from other documents filed by the plaintiffs on record, it becomes clear that there is a Government site adjoining towards the Southern side of suit properties of plaintiffs.

14) As such, it prima facie appears that the plaintiffs have not come before the Court with clean hands to seek relief of temporary injunction and they have suppressed material fact from the Court i.e. existence of Government site in plot No.83 towards Southern side of their suit properties. It is settled law that party is not entitled to relief of temporary injunction if such party does not come before the Court with clean hands. Not only this, in absence of identifiable correct four boundaries of suit properties, relief of temporary injunction can not be granted in favour of plaintiffs. Moreover, the plaintiffs who are alleged to have committed encroachment on Government site are not entitled to any protection from the Court in the form of temporary injunction to protect their illegal encroachment without showing any legal right existing in their favour as held by the Hon'ble Bombay High Court

in the case of **Municipal Council, Pusad Vs. Kundanlal Mohanlal Jaiswal and Others** reported in 2007 (3) ALL MR 86.

15) Not only this, learned advocate for plaintiffs has submitted during argument that property adjoining to the Southern side of plaintiffs' suit properties is not owned by defendant No.6 and therefore, he has no locus standi to make any complaint regarding alleged encroachment upon the so called public road to Municipal Council, Karanja Lad. However, I do not agree with such submission of learned advocate for plaintiffs because in the case of **Jivanlal Pokardas Motwani Vs. State of Maharashtra & Ors.**, the Hon'ble Bombay High Court has observed that when the issue is concerning encroachment on public road, the plaintiff is not bound to prove how he, in particular, was restricted in his movement by the encroachment. Individually and as a member of the public, a citizen has a right to move on any or every part of the road at any time he chooses to do so. It is no answer for an encroacher to say that the plaintiff has alternate way and no special damage is caused to the plaintiff.

16) Thus, considering the peculiar facts and circumstances of the present case and material on record, I hold that plaintiffs have not made out prima facie case. Plaintiffs have also not shown that balance of convenience lies in their favour. Moreover, no irreparable loss will be caused to plaintiffs if temporary injunction is not granted against 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 present application deserves to be rejected. Therefore, I pass following order.

ORDER

- 1] Present application is rejected.
- 2] Parties to the suit to take note of this order.
- 3] Costs in cause.

Date – 13/04/2026.

(S. W. Thombre)
Civil Judge, (Sr.Dn.),
Karanja (Lad).

CERTIFICATE

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

- 1) Name of Stenographer :- S. P. Kale (Stenographer G-III)
- 2) Name of Court :- Civil Judge (S.D.), Karanja.
- 3) Date :- 13/04/2026
- 4) Order signed by the presiding officer on :- 13/04/2026
- 5) Order uploaded on :- 13/04/2026