

MHYA240002112025



ORDER PASSED BELOW EXH.05

1) This is an application filed by the plaintiffs seeking temporary injunction under Order-XXXIX, Rule-1 and 2 r/w Section 151 of the Code of Civil Procedure, against the defendant nos.6 and 7 by which they pray for restraint order against the defendants from converting their properties into plots and against development of it and they also pray for restraint order against non alienation of the properties of defendant nos.6 and 7.

Whereas in the suit, plaintiffs have prayed for reliefs of declarations regarding demarcation, measurement and map of the defendant nos.6 and 7 as void and illegal, for declaration of N.A. permission to them as null and void and for mandatory injunction as well as perpetual injunction and compensation etc.

The case of the plaintiffs may be briefly stated as below;

2) The plaintiffs are the joint owners and possessors of the land Gat No.83/1 admeasuring 0.30R which was earlier agricultural land and it is situated at mouza Chikhalgaon and it has been granted non-agricultural permission in 2016 and thereafter 3 plots have

been carved-out from it. Whereas defendant nos.1 to 5 are public officers as District Magistrate, Yavatmal, S.D.O. Wani, Assistant Director Town Planning officer, Yavatmal, District Superintendent District Land Record office, Yavatmal respectively. Whereas defendant nos.6 and 7 are own and possess adjacent Eastern side property Gat No.83/2 admeasuring 1.95 R and Gat No.1/1/A admeasuring 1.03R.

3) Plaintiffs further plead that, the original area of Gat No.83 was 10.03 H.R. and it split into 83/1 admeasuring 2.13 H.R., Gat no.83/2 admeasuring 2.17 H.R., Gat no.83/3 admeasuring 2.90 H.R., Gat no.83/4 admeasuring 2.02 H.R. and 0.81 R of it was acquired for Gawthan. Gat No.81/1 admeasuring 2.13 R was owned by one Shankar Dhumne out of which 1.81 R was done as non-agricultural property as per the order in 1988 and remaining 0.32 R was sold to Vijay Agrawal by Shankar Dhumne out of which 2R was acquired for road and Vijay Agrawal thus, owned 0.30R of Gat no.83/1 which was purchased by plaintiffs and they got it converted into non-agricultural purpose as per order on 30/08/2016.

4) Plaintiffs further plead that defendant nos.6 and 7 got their land measured on 27/4/2018 without any notices to plaintiffs and adjacent land owners and that was measurement as per the area shown by these defendants and not as per the revenue record. Therefore, that measurement is illegal and on basis of that measurement defendant nos.6 and 7 attempted to demarcate their

property by trying to erect boundary stone in the property of the plaintiffs which was resisted by plaintiffs and these defendants applied for N.A. permission to defendant no.2 on 22/07/2024 and plaintiffs objected to it by filing his objection still defendant nos.6 and 7 are trying to get orders from the public officers by misleading them and therefore, defendant no.3 issued first T.P. order and sent it to defendant no.5 for demarcation which was objected by the plaintiffs by filing objection to defendant no.5 office and requested for hearing. Plaintiffs again filed objection on 26/11/2024 to defendant no.5 office and intimated about illegal site inspection report dated 26/11/2024 by employee of defendant no.5 office namely Shri Rathod and he had not done any demarcation and boundary fixation and had not erected boundary marks still report was sent by him about having done demarcation and there is collusion of defendant no.2, 3 and 5 with defendant nos.6 and 7 therefore, plaintiffs sent notice under section 80 to defendant no.1 to 7 which was served to defendant no.1 to 5. Therefore, defendant no.1 sent letter to defendant no.2 to take action and to report. Moreover, defendant no.3 sent notice to plaintiff's counsel on 10/01/2025 disclosing sending back the demarcation proposal due to disputed measurement. Therefore, plaintiffs felt that there would be hearing and they would be informed. Moreover, defendant no.4 had sent letter to defendant no.5 office to take action on the complaint and file the report still without doing any

hearing and measurement defendant no.5 sent letter to plaintiff no.2 and informed him that measurement was done on 26/11/2024 by giving notice to all adjacent land holders including plaintiffs and the said measurement was as per the proposed non-agricultural land. However, there was no any notice to plaintiffs which was objected by plaintiffs by filing application on 21/03/2025 to defendant no.3 office and as per that letter defendant no.3 office sent letter to defendant no.2 office and informed that due to disputed measurement matter was sent back and it was again disputed about ownership and measurement and possession therefore, further action was directed still defendant no.2 did not conduct any inquiry inspite of application of plaintiffs on 07/04/2025 and defendant no.2 informed to defendant no.5 office about detail inquiry in the matter still there was no any report sent by defendant no.5 office and thus the defendants are colluding with each other. Thereafter, defendant no.2 kept hearing on 30/05/2025 and they also felt that detail inquiry is necessary but due to collusion between them and due to political pressure, defendant no.2 office without informing plaintiff rejected plaintiffs objection on 19/06/2025 and on 21/06/2025 that too on holiday, granted N.A. permission to defendant no.6 and 7. Thus, plaintiffs prays for temporary injunction as mentioned above.

**The case of the defendant no.2 may be briefly
stated as below;**

5) Although there is no specific prayer against defendant no.2 however, due to allegation of collusion defendant no.2 has filed his say to T.I. application vide Exh.31 and conceded grant of N.A. to the plaintiffs earlier and carving of three plots in it which are in the name of plaintiffs. However, it point outs that plaintiffs have not complied terms of N.A. permission. Moreover, it has also denied alleged illegal measurement of defendant no.6 and 7 without notice to plaintiffs and denied that there was no any demarcation at the site on 26/11/2024 and contends that plaintiffs did not get measured Gat no.83/1 and there is no proof of extent of alleged encroachment and it contends that hearing was given to the plaintiffs on 30/05/2025 and as per the rules N.A. permission was granted and plaintiffs N.A. lay out is open without any road, drainage and electric pole etc. Hence, it prays to reject T.I. application.

The case of the defendant no.3 may be briefly stated as below;

6) Defendant no.3 which is town planning officer has filed his say and W.S. Exh.36 and conceded N.A. of plaintiffs property in 2016. Moreover, it also contended that the non-agricultural permission has also been granted to defendant no.6 and 7 and their department is not directly concerned with the dispute. Moreover, the N.A. permission dated 21/06/2025 has been granted as per the Section 18 of the Town Planning Act and there is a bar to the

jurisdiction of the Court as per Section 149. Hence, it prays to reject this application.

The case of the defendant no.6 may be briefly stated as below;

7) Defendant no.6 who is one of the owner of adjacent property has filed his contesting W.S. and say vide Exh.39 and contended that there is no cause of action to the plaintiffs suit. Moreover, there is bar of non joinder of necessary party as land holders of entire Gat no.83 have not been impleaded. Moreover, the public office as well as these defendants have been unnecessarily impleaded. Moreover, there is no complete description and mention of four corners of the Gat no.83 and its all sub divisions.

8) This defendant further pleads that he was not given any notice about non-agricultural permission of 1.81 H.R. land of one Shankar Dhumne of 1988 and questiones legality of that N.A. Moreover, it is contended that the said earlier owner of 0.32 R sold the property to Vijay Agrawal without delivery of possession which was also mentioned in the sale-deed and this has been suppressed by the plaintiffs and therefore, plaintiffs sale-deed is without possession and there is no any proof of acquisition of 0.2R land from one Vijay Agrawal who sold it to the plaintiffs. This defendant also reveals his ignorance about plaintiffs N.A. permission on 30/08/2016 and contends that N.A. permission was granted on paper only by collusion with the concerned officers and there is no possession of plaintiffs at the site.

Moreover, plaintiffs are not adjacent land holders of defendant no.6. Moreover, plaintiffs did not challenge measurement of defendant no.6 before competent forum and there is already demarcation of boundary marking by cement pole by defendant no.6 and there was no any attempted demarcation by defendant no.6 as alleged by plaintiffs. Moreover, plaintiffs plea of encroachment is vague.

9) Moreover, there are no necessary ingredients in favour of plaintiffs for grant of temporary injunction. Moreover, as per the revenue record initially area of Gat no.83/1 was 1.89 H.R. and later on it was shown as 2.13 H.R. Hence, defendants pray for rejection of this application.

10) Defendant no.7 inspite of service has failed to appear. Hence, application and suit proceeded exparte against him. Moreover, defendant no.1, 4, 5 were also served still they did not appear therefore, suit proceeded exparte against them.

11) Heard. Perused entire record. On rival pleadings, the following points arise for my determination. I have recorded my findings to those points for the reasons stated below.

Sr. No.	POINTS	FINDINGS
1)	Whether the plaintiffs are having <i>prima facie</i> case ?	Affirmative.
2)	Whether balance of convenience	Affirmative

	lies in favour of plaintiffs ?	
3)	Whether irreparable loss would be caused to the plaintiffs, if injunction is refused ?	Affirmative
4)	What order ?	Application is allowed.

REASONS

As to point Nos.1 to 3:-

12) All these points are discussed together for the sake of brevity.

13) Plaintiffs have adduced certain documents vide Exh. 03 list which are 22 in numbers and vide Exh.28 list which are 02 in numbers. Defendant no.2 adduced certain documents vide Exh.34 and Exh.42 list. Whereas defendant no.6 adduced documents vide Exh.44 list and Exh.45 list.

14) As noted above, plaintiffs claim to be owner and possessor of Gat no.83/1 admeasuring 0.30 H.R. which has been accorded N.A. permission in 2016 and accordingly 3 plots have been curved out from it and plaintiffs contend that defendant no.6 and 7 who are Eastern side land holders of Gat no. 83/2 admeasuring 1.95 H.R. and Gat no.1/1/A admeasuring 1.03 H.R. and they got their land measured in 2016 without plaintiffs knowledge and that measurement was illegal and they also got N.A. permission on 21/06/2025. Insite of their objection and they are attempting to demarcate boundary marks in certain area of the plaintiffs.

15) Plaintiffs in the suit did not specifically allege

extent of encroachment. However, as per Exh.28 plaint map plaintiffs have alleged 1232 sq.mtr. of encroachment into his property by defendant no.6 and 7.

16) Defendant nos.2, 3 and 6 have denied allegations of the plaintiffs and defendant no.2 and 3 justify grant of non-agricultural permission to the defendant no.6 and 7 whereas point out lapse of N.A. permission to the plaintiffs due to non initiation of non-agricultural utility and defendant no.6 contends that there is no any basis for alleged encroachment. Moreover, there is no any proof regarding it. Moreover, plaintiffs title document was without possession as plaintiffs seller did not have possession over the property.

17) The plaintiffs have alleged non notice of the measurement of the defendant no.6 and 7 which was done on 27/04/2018 and it was done as per the possession shown by the defendants and it was not done as per the revenue record of the property.

18) The contesting defendants have contended that there was due service to the adjacent land holders. However, these defendants did not file any record of service to plaintiffs or any other adjacent owners. Moreover, the concerned defendant no.4, 5 inspite of service chose not to appear. Moreover, from the perusal of said measurement map which is at Exh.03/04 list it reveals names of only defendant no.6 and 7 and one Panch as present and there is also mentioned of applicants there in showing there

possession. Therefore, there is nothing on record to infer service of notice.

19) The plaintiffs have claimed to be owners and possessors of Gat no.83/1 admeasuring 0.30 H.R. which was accorded N.A. permission and plot no.1 to 3 were curved out from it. This has been conceded by defendant no.2 and 3.

20) However, defendant no.2 and 6 contend that N.A. permission granted to the plaintiffs got expired as within a year non-agricultural utility has to be started and which was not done by the plaintiffs.

21) The N.A. permission demarcation lay out of plaintiffs have been filed on Exh.03 list and there is one stipulation of commencing non-agricultural use within a year as per stipulation no.22 and defendant no.2 has filed one report of village revenue officer which was addressed to S.D.O. dated 01/08/2025 which reveals that there is no any demarcation and boundary mark in property of the plaintiffs and there is open area and grass and water on the ground.

22) Plaintiffs contend that they have not received any written cancellation of N.A. order. Moreover, three plots have been curved out and some amenities such as road have been built.

23) Irrespective of that, the plaintiffs contend to be owner and possessors of the Gat no.83/1 admeasuring 0.30 H.R. on basis of registered sale-deed in their favour which

have been produced on record by them as per Exh.28/1 list. Perusal of which reveals that as per sale-deed dated 26/03/2015 one Babarao Jhilpilwar and plaintiff no.1, 3 and 4 have purchased the said property from one Vijay Agrawal and there is stipulation of delivery of possession also.

24) Defendant no.6 contends that the earlier owner of Gat no.83/1 had not got possession as per the sale-deed and it has been produced vide Exh.45 list which is sale-deed between Gayatribai Agrawal and Shankar Dhumne and said Shankar Dhumne sold 0.32 H.R. area to the Gayatribai Agrawal and there is stipulation of delivery of possession. Moreover, there is also mention of some area which is not in possession, has to be taken into possession by purchaser.

25) The said stipulation does not imply non delivery of possession of entire area. Moreover, it only implies that some area's possession was not with the seller. However, the sale-deed which is in favour of the plaintiffs does not have any such stipulation.

26) Moreover, there was measurement of the plaintiffs area and N.A. order was passed consequent to the demarcation and lay out map. Therefore, there is no any prima facie substance in the pleading of the defendant no.6 that there is no any physical possession of the plaintiffs at the site and their title document is without possession.

27) The plaintiffs although did not get measured their Gat no.83/1. Moreover, defendant no.6 and 7 also did

not get measured their property after commencement of this dispute and the entire measurement of Gat no.83 would reveal the position.

28) However, considering the title document of the plaintiffs and the alleged encroachment in the plaintiffs property. The apprehension of the plaintiffs is reasonable as non grant of injunction will cause multiplicity of litigation and there would be cloud over title and possession of the future buyers.

29) Moreover, the concerned authorities prima facie did not address the grievance of the plaintiffs inspite of repeated objections to the measurement and demarcation process. Moreover, the order of N.A. has been passed on 21/06/2025 which happened to be saturday and which is holiday for the state Government.

30) Moreover, the basis on which demarcation was allowed was the report dated 26/11/2024 which has been done by one employee of defendant no.5 office and plaintiffs have alleged that there was no any measurement and demarcation activity at the site still such a report was sent without informing plaintiffs. Moreover, the concerned authorities, without assigning any reason have accepted that report. Moreover, there is no any record about service of the plaintiffs for such site inspection when he had objected to it. Moreover, defendant no.5 chose not to appear.

31) The plea of the defendants of non impleadment

of necessary parties such as one of the purchaser as Babarao Jhilpilwar and non impleadment of land holders of Gat no.83 does not prima facie appear to be correct as the said Babarao Jhilpilwar is reported to be dead as disclosed by plaintiffs counsel. Moreover, there is grievance about encroachment in plaintiffs property by defendant no.6 and 7 and therefore, prima facie their impleadment only appears to sufficient at this juncture.

32) Moreover, there is sufficient description of the suit property as well as the four corners which has been given in the plaint. Moreover, the sale-deed of the plaintiffs and his earlier purchaser is also on record and there are no any inconsistency.

33) Moreover, even the plea of the defendant no.6 of no existent and non physical possession of the plaintiffs over the property inspite of registered sale-deed in their favour also warrants protection to the plaintiffs apprehension.

34) Moreover, these documents produced by plaintiffs regarding the entire area of Gat no.83/1 and how did it got sub divided imply no inconsistency in the area which is evident on the documents even produced by defendant no.6.

35) The counsel of the defendant no.2 has filed pursis Exh.47 disclosing the non-agricultural rules 1969 and particularly rule 4(1)(C) which stipulates that non-agricultural use shall commence within one year and failing

which it shall lapse. However, as noted above inspite of purported lapse of non-agricultural permission, plaintiffs prima facie does not loose his ownership and possession of the property which is based on the registered instrument.

36) Moreover, although the plaint map produced by plaintiffs vide Exh.28 list does not have any presumptive value. However, there is basis for maintaining action as discussed above

37) Moreover, counsel of the defendant no.6 has also cited case law,

1. **Vyankati Raghobaji Parbat & Anr. Vs Sau. Varsha Vinod Deshpande & Anr. 2005(2)ALL MR 157 .**

2. ***Padhiyar Prahladi Chenaji (deceased) through L.R's & ors. Vs Maniben Jagmalbhai (deceased) through L.R's & ors. ((2022)12 SCC128)***

38) The first ruling inter alia provides for non grant of temporary injunction against true owner whereas second ruling is above no injunction against true owner.

39) However, in the present case plaintiffs have alleged encroachment in their area and defendant no.6 entirely denies the possession of the plaintiffs over their property and therefore, the alienation of the property of the defendants would complicate the future transaction and in future during the course of hearing and possible measurement may reveal plaintiffs certain area with the defendants.

40) Therefore, the cited rulings do not aid the case of the defendant no.6.

41) Hence, there is prima facie case, balance of convenience and irreparable loss in favour of the plaintiffs. Hence, I have recorded findings on points Nos.1 to 3 in the affirmative.

As to point No.4:-

42) Hence, in view of findings recorded to point Nos.1 to 3, plaintiffs are entitled for relief of temporary injunction as prayed for. Hence, in answer to point No.4, following order is passed.

ORDER

- 1) The application (Exh.05) is hereby allowed.
- 2) Defendant nos.6 and 7 are hereby directed by temporary injunction and restrained from taking any further consequent action on site as well as on paper such as revenue entries etc, on basis of N.A. permission granted to them and are further directed not to alienate their property to third persons till decision of the suit.
- 3) Costs in cause.

Date : 12.08.2025

(P. S. Jondhale)
Civil Judge (Sr. Dn.),
Wani.