

RAJASTHAN HIGH COURT

सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 7238/2025

Premchand Manshani S/o Gulab Rai, Aged About 58 Years, R/o Mukti Marg, Nayapura, Kota (Raj.).

-----Petitioner

Versus

1.

Smt. Savitri Devi Sharma W/o Late Hemant Sharma, R/o Panchmukhi Hanuman Mandir Ke Pass, Mukti Marg Road, Sabjimandi, Nayapura, Kota (Raj.).
2.

Nirlesh Bhargav S/o Late Ramswaroop Bhargav, R/o Mamta Studio, 26, Rampushp Krishna Vihar, Chungi, Naake And Kalayan Properties Ke Pass, Kunhadi, Kota.
3.

Kamal Bharagav S/o Late Ramswaroop Bhargav, R/o Mamta Studio, 26, Rampushp Krishna Vihar, Chungi, Naake And Kalayan Properties Ke Pass, Kunhadi, Kota.
4.

Nagar Nigam, Kota Uttar, Through Aayukt Office, Dusherra Maidan, Chambal Garden Road, Kota (Raj.).

-----Respondents

For Petitioner(s)

:

Mr. Manvendra Singh on behalf of
Mr. Hridyesh Singh

For Respondent(s)

:

Mr. Amit Dadhich
Ms. Gunjan Chawla
Ms. Priyamada Singh

HON'BLE MR. JUSTICE BIPIN GUPTA

Judgment

1.	Date of conclusion of arguments	03/12/2025
2.	Date on which judgment was Reserved	03/12/2025
3.	Whether the full judgment or only the operative part is pronounced	Full Judgment
4.	Date Pronounced	11/12/2025

1. The present writ petition has been filed assailing the order dated 28.04.2025, passed by learned Additional District Judge, No. 6, Kota, in Civil Misc. Appeal No. 36/2025, whereby the appeal was dismissed and the order dated 05.03.2025, passed by Additional Civil Judge, No. 2 (North), Kota, in Civil Misc. Case No.

19/2024, was upheld, rejecting the application filed by the plaintiff-petitioner for temporary injunction under Order 39 Rules 1 and 2 of CPC.

2. Brief noted facts of the writ petition are that the plaintiff-petitioner Premchand filed an application for temporary injunction before the trial court alleging that respondent No. 1- Smt. Savitri Devi, after purchasing a house from respondents no. 2 and 3, colluded with employees of respondent no. 4 and obtained a patta dated 01-06-2023, for an area larger than purchased, and on the basis of this allegedly illegal deed, began constructing RCC pillars, a roof, and stairs by encroaching about six feet on government land on the northern side of her house without any construction approval and in violation of model bye-laws, thereby blocking the plaintiff- petitioner's air, light, and access to pathway.

3. The plaintiff- petitioner complained to respondent no. 4, which initially restrained respondent no. 1 from further construction.

4. The respondent no. 1 denied the allegations, claiming only carrying out permissible repair work.

5. It was further contended that the plaintiff- petitioner himself had encroached on government land.

6. Respondent no. 4 supported respondent no. 1, asserting that lease of respondent no. 1 was validly issued and no bye-law violations were found during inspection.

7. After hearing both parties, the learned Trial Court, vide order dated 05.03.2025, dismissed the plaintiff-petitioner's application for temporary injunction filed under Order 39 Rules 1 and 2 CPC.

8. Aggrieved by the order, the plaintiff-petitioner preferred an appeal, which was also dismissed by the learned Appellate Court vide order dated 28.04.2025.

9. Hence, this civil writ petition on behalf of the plaintiff-petitioner.

10. Learned counsel for the plaintiff-petitioner submits that the impugned orders dated 05.03.2025 and 28.04.2025 are illegal, arbitrary, and contrary to the principles of Law.

10.1 It is argued that the petitioner has sought for cancellation of the patta as well as a permanent and temporary injunction on the ground that respondent no. 1 is raising unauthorized construction without obtaining prior approval and in violation of the Model Bye-laws and Section 194 of the Rajasthan Municipalities Act, 2009.

10.2 It was contended that the *Patta* has been illegally issued in favour of the respondent No.1 based on the long possession whereas, the respondent No.1 has purchased the property from the respondent Nos. 2 & 3.

10.3 It was emphasized that respondent no. 4 (Nagar Nigam, Kota) itself issued a warning letter dated 15.02.2024 and a subsequent notice dated 27.03.2025, directing respondent no. 1 to stop the unauthorized construction and acknowledging the encroachment. The petitioner placed on record these documents along with photographs depicting the blockage of the access road, obstruction of air and light, and narrowing of the public pathway, thereby causing substantial inconvenience and posing significant safety risks.

10.4 The Trial Court, after having initially granted status quo on 20.02.2024, failed to provide cogent reasons for subsequently reversing its prima facie findings, thus exercising its discretion arbitrarily and overlooking the petitioner's established case of irreparable injury and balance of convenience. Counsel therefore, prays that the writ petition may be allowed and consequently the application of temporary injunction may be allowed.

11. Per contra, learned counsel for respondent no. 1 submits that the patta in favour of respondent no. 1 was issued, after due process of law.

11.1 It is contended that the plaintiff-petitioner himself was a witness to the registration of the patta and is, therefore, estopped from challenging its validity at this stage.

11.2 Counsel further submits that no new construction is being undertaken by respondent no. 1; rather, only renovation work within the existing structure is being carried out. It is also asserted that the Commissioner's report clearly records that no new construction has been made by respondent no. 1. Learned counsel additionally contends that the plaintiff-petitioner himself encroached upon government land, as reflected in the Commissioner's findings, and in view of these circumstances, the courts below have committed no illegality or perversity, so as to call for any interference under Article 227 of the Constitution of India. He therefore, prayed that the writ petition may be dismissed.

12. Heard both the parties and perused the material available on record.

13. This Court finds that during pendency of the present writ petition, an affidavit has been submitted by the respondent No.4 which has not been controverted by any of the parties. The respondent No.4 had stated that under the Rajasthan Model Building By-laws 2020, there is no requirement of any approval for making any repair or any renovation of the work. It was further stated in the affidavit that when the Nagar Nigam, Kota issued a notice to the respondent No.1 to stop the illegal construction on 02.06.2025 and thereafter, vide order dated 17.06.2025, the building was sealed on 18.06.2025. Against action of Nagar Nigam, Kota, respondent No. 1 filed a civil suit along with the temporary injunction application before the Court of Civil Judge (Junior Division-II), North Kota. The learned court below in that temporary injunction application has issued an order dated 06.08.2025, directing the municipality not to cause obstruction on the condition that if the plaintiff-applicant (hereinafter referred as "respondent No.1") carry out renovation/alteration work on her *patta Land*.

14. In view of the orders passed as above and the reply of respondent No.1, this court deems it appropriate to order that the respondent No.1 will make repair and renovation work only. If the respondent No.1 wants to raise any new construction than respondent No.1 would be required to seek permission of the respondent No.4-Municipality in accordance with law.



15. With the above observations, the present writ petition is disposed of.

16. All pending application(s), if any, stands disposed of.

(BIPIN GUPTA),J

ANAND TANWAR/55