

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.3751 OF 2025**

Mayura Proprietors & Developers Pvt. Ltd.,
Through Director,
Aditya Mallikarjun Dhange,
Age: 56 years, Occ: Builder,
R/o 90/23, Bhavani Peth,
Solapur.

..Petitioner
(Orig. Plaintiff)

Versus

The State of Maharashtra,
The Collector, Solapur,
Office : Collector Compound,
Sat Rasta, Solapur.

..Respondent
(Orig. Defendant)

...

Mr. Akshay Prakash Shinde, Advocate for Petitioner.
Mrs. S. N. Deshmukh, AGP for Respondent/State.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 17th NOVEMBER, 2025.**

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matter is taken up for final hearing at admission stage.
2. The petitioner impugns order dated 12.11.2024 passed by District Judge, Solapur in Miscellaneous Civil Appeal No.48/2024, by which order dated 30.04.2024 passed by Civil Judge Senior Division, Solapur below Exhibit-5 in Regular Civil Suit No.123/2024 has been quashed and set aside and petitioner's application for grant of temporary mandatory injunction has been rejected.
3. The petitioner is original plaintiff in Regular Civil Suit No.123/2024. The suit has been instituted contending that property

bearing CTS No.3242 admeasuring 1046.2 sq. mtrs. situated at North Sadar Bazaar, Solapur was granted to Hanmant Magaji Kondi by State of Maharashtra. No condition was imposed upon him either to deposit Nazarana/Kabulayat or to obtain permission before alienating land. Eventually, Hanmant transferred land to Mr. Ganesh Joshi. In year 1932, Mr. Ganesh Joshi transferred land alongwith construction to Mr. Abdul Kadar Chandsab. In year 2013, plaintiff purchased land from his heirs namely Akbar Dastgir Shaikh and 58 others. The plaintiff raised construction of apartment with due permission from Municipal Corporation. The occupancy certificate has been issued by Municipal Corporation. At this stage, defendant/District Collector issued communication dated 26.08.2020 restraining him from transferring flats and shops from constructed building without permission of Collector and ordered him to deposit amount of Rs.78,75,675/-. The plaintiff has challenged said order before Divisional Commissioner, Pune.

4. In this background, petitioner sought relief of declaration that he is entitled to transfer property without any restriction in terms of Kabulayats dated 17.11.1923 and 26.09.1926 and sought perpetual injunction against defendant from restraining them from creating any obstruction for sell of property to third person. The petitioner filed an application below Exhibit-5 seeking temporary mandatory injunction against defendant nos.1 and 2 for issuance of no objection certificate

for execution and registration of sale deed except two flats. The Trial Court allowed said application vide order dated 30.04.2024.

5. The respondent/defendant aggrieved by said order filed Miscellaneous Civil Appeal No.48/2024 before District Judge at Solapur, who allowed said Appeal by setting aside order passed below Exhibit-5 by Trial Court.

6. Mr. Akshay Shinde, learned Advocate appearing for petitioner would submit that Mr. Hanmant Magaji Kondi was in possession of property without any restriction of transfer. Accordingly, he transferred said property in favour of Mr. Ganesh Joshi in year 1928. The petitioner has derived title from purchaser i.e. Mr. Ganesh Joshi. After petitioner completed his building as per permission granted by Municipal Corporation, communication was made by defendant no.2 restraining transfer of flats and shops. Therefore, petitioner has filed suit seeking declaration and sought temporary mandatory injunction to issue no objection certificate for transfer of flats and shops. The Trial Court had rightly considered this aspect. However, Appellate Court on erroneous count vacated interim injunction in exercise of appellate jurisdiction.

7. Mrs. Deshmukh, learned AGP vehemently opposes writ petition and supports impugned order.

8. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that on 26.08.2020 defendant had restrained plaintiff from transferring property without permission of Collector. On 25.11.2020, plaintiff moved an application seeking permission to sell units constructed in building. On 20.04.2023, Collector passed order directing plaintiff to deposit amount of Rs.78,75,675/- on the ground that sale deeds regarding transfer of property were without depositing Nazarana and without securing necessary permission. The aforesaid order was subjected to challenge before Divisional Commissioner at Pune in Appeal No.31/2023. It is informed that said Appeal is also dismissed.

9. The plaintiff is seeking declaration that land in question was free hold without restriction of transfer. The Appellate Court has rightly observed that whether land in question was free hold will have to be decided by Competent Authority under MLR Code and suit seeking such declaration would be impliedly barred. The learned District Judge has also observed that once petitioner has surrendered jurisdiction to Collector ascertaining his claim, Civil Court would not have jurisdiction to rule on such question. The District Judge has rightly referred to provisions contained under Section 4 Maharashtra Revenue Jurisdiction Act, 1876 and, *prima facie*, held that jurisdiction of Civil Court would be barred in respect of instrument or Sanad given by an order of State Government.

10. In aforesaid backdrop, this Court do not find any reason to cause interference in well reasoned order passed by District Judge in exercise of appellate jurisdiction. Apart from reasons as recorded by District Judge, this Court finds that when plaintiff is seeking declaration as to his free hold right to deal with property, unless such right is decided by Court and declaration is granted, application seeking temporary mandatory injunction to grant no objection certificate for sell of units in subject building cannot be considered. The temporary mandatory injunction is extraordinary relief and same cannot be granted to create irreversible situation.

11. In present case, petitioner claims temporary mandatory injunction to grant no objection certificate for sell of units. If petitioner sells shops and flats to third parties on the basis of order in nature of temporary mandatory injunction, it would create anomalous situation. Even innocent purchasers would suffer. On other hand, if plaintiff succeeds in getting relief as claimed in suit, he can sell properties without any demure.

12. In that view of matter, this Court do not find any merit in Writ Petition. Hence, petition stands rejected.

13. Rule stands discharged.

(S. G. CHAPALGAONKAR)
JUDGE