

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.11752 OF 2025**

Saipan Hussain Bagwan
Age-53 years, Occupn. Hotel business,
R/o. Kale Tek, Taluka-Karad,
District Satara.

..Petitioner
(Original Plaintiff)

Versus

Sarpanch
Grampanchayat Kale,
Tal. Karad, Dist. Satara.

..Respondent
(Original Defendant)

...

Mr. P. D. Dalvi, Advocate for Petitioner.
Mr. Kalpesh U. Patil i/by Mr. S. V. Chavan, Advocate for Respondent.

...

**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 25th 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 25.09.2025 passed by District Judge, Karad in Miscellaneous Civil Appeal No.1/2025, thereby upholding order dated 23.12.2024 passed by Joint Civil Judge Junior Division, Karad below Exhibit-5 in Regular Civil Suit No.343/2022, thereby refusing petitioner's claim for grant of temporary injunction.
3. The petitioner/plaintiff instituted Regular Civil Suit No.343/2022 before Civil Judge Junior Division, Karad seeking relief of perpetual injunction against respondent/defendant. In short it is contention of plaintiff that he is owner of house property, which is part and parcel of Gut No.718. Since 1999, original owner Ganpat Bahiru

Shelke has given the same in possession of plaintiff and plaintiff has raised construction, which has been recorded with Grampanchayat. The plaintiff is running grocery shop and tea stall over property. The respondent/defendant served notice dated 07.07.2021 alleging illegal construction in Grampanchayat property bearing Block No.65. The plaintiff has already replied same contending that his construction falls in Gut No.718 and not in Grampanchayat property. However, defendant is trying to initiate action in pursuance to notice dated 07.07.2021. Hence, he filed suit for relief of perpetual injunction. The plaintiff has also filed application for grant of temporary injunction below Exhibit-5.

4. The respondent/defendant refuted petitioner's claim contending that he has raised unauthorized construction by encroaching over Block No.65 and created obstruction to public way. He was served with notices dated 07.07.2021, 15.09.2021 and 23.11.2021 under Section 53 of Maharashtra Village Panchayat Act (for short 'MVP Act') for removal of unauthorized construction over land of Grampanchayat. However, he failed to act upon said notice. The Grampanchayat has authority under Sections 52 and 53 of MVP Act to remove any encroachment on public or Grampanchayat property. The plaintiff has not challenged notice issued by Grampanchayat in exercise of powers under Section 53 of MVP Act. He has efficacious remedy to challenge notice under Section 53(3A) of MVP Act. However, without availing

same, present suit seeking injunction is instituted, which is barred by law.

5. The Trial Court after considering rival submissions rejected plaintiff's application filed below Exhibit-5. Aggrieved plaintiff filed Appeal before District Judge, which has been rejected vide impugned order dated 25.09.2025.

6. Mr. P. D. Dalvi, learned Advocate appearing for petitioner submits that Section 53 of MVP Act has no application in facts of case. The plaintiff has specifically pleaded that his ownership and possession is over suit property, which is part and parcel of Gut No.718. The respondent owns land in Block No.65. There is nothing on record to depict that construction of petitioner stands on Grampanchayat property. The Grampanchayat has no authority to take action against petitioner under Section 53 of MVP Act. Both Courts have erroneously observed that construction raised by petitioner is on property of Grampanchayat.

7. Per contra, Mr. Kalpesh Patil, learned Advocate appearing for respondent supports impugned orders. He would submit that neither petitioner has title over suit property nor his suit is maintainable under law. Mr. Patil submits that in light of provisions under Section 53 of MVP Act suit is not maintainable. The plaintiff has no right to seek relief as claimed in suit.

8. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that plaintiff has filed suit seeking relief of perpetual injunction without seeking declaration of his title. The plaintiff claims his possession on the basis of oral agreement with one Mr. Ganpat Bahiru Shelke. The plaintiff has not substantiated title of Ganpat Shelke in respect of property in his possession. The thrust of plaintiff's contention is based on entry in Grampanchayat record since 1999. However, such entry is deleted in year 2020. As such, as on today there is no official document depicting plaintiff's right over suit property.

9. The respondent served three notices to petitioner in exercise of powers under Section 53 of MVP Act for removal of obstruction and encroachment upon public street or site. The plaintiff/petitioner has made reference in plaint to only one notice dated 07.07.2021 served upon him. Admittedly, plaintiff has not challenged said notice taking recourse to remedy under sub-section (3A) of Section 53 of MVP Act, which provides Appeal before Commissioner. Pertinently, petitioner has not raised challenged to notice served upon him in exercise of statutory powers conferred upon Grampanchayat.

10. It is trite that, party can seek protection of his settled possession. However, in present case, petitioner/plaintiff failed to establish his legal right to continue in possession of property, particularly when such

property belongs to Grampanchayat. The plaintiff could not substantiate his claim that his construction stands in private property. The Trial Court as well as Appellate Court observed that location of construction of shed is not on private land belonging to Shri. Limbare as claimed by plaintiff.

11. Perusal of impugned orders would depict that Courts below have properly considered factual and legal aspects of matter and refused to grant temporary injunction as claimed by plaintiff. This Court finds that when plaintiff has failed to challenge notice for removal of unauthorized construction served upon him in terms of Section 53 of MVP Act, he cannot seek injunction against Grampanchayat from proceeding further in pursuance to notice. Even Civil Court would not be competent to grant temporary injunction against Grampanchayat, who has taken steps within its authority for removal of obstruction and encroachment on public property.

12. In that view of matter, no case is made out to cause interference in impugned order under Article 227 of Constitution of India. In result, Writ Petition stands dismissed.

13. Rule stands discharged.

(S. G. CHAPALGAONKAR)
JUDGE