

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL REVISION APPLICATION NO.635 OF 2024**

Shri. Balraj Digambar Jadhav

Age. 45 Occu. Business

R/at. CTS. No. 1383, A Ward, Shivaji Peth,
Kolhapur

..Applicant

Versus

1. Shri. Bharat Krishnarao Mandlik
Age- 67 years Occu. Business

2. Shri. Sharad Krishnarao Mandlik
Age. 63 years Occu. Service

3. Shri. Dipak Krishnarao Mandlik
Age. 60 years Occu. Service

4. Shri. Ravindra Krishnarao Mandlik
Age. 58 years Occu. Civil Engineer

Applicant No. 1 to 4 R/at. 372/4,
14th lane, Rajarampuri, E ward Kolhapur

5. Kolhapur Municipal Corporation
Through Ld. Commissioner, Kolhapur

6. Shri. Nitin Hindurao Mandlik
Age. 54 years Occu. Business
R/at. Plot No. 38, Sanmitra Housing
Society, Katkar Mala, Rajarampuri, Kolhapur ..Respondents

**AND
CIVIL REVISION APPLICATION (STAMP) NO.5091 OF 2025**

Kolhapur Municipal Corporation,
VRATO Through The Commissioner,
Kolhapur

..Applicant

Versus

1. Shri. Bharat Krishnarao Mandlik,
Age: 67 years, Occ: Business,
R/o: 372/4, Rajarampuri 14th lane.
E ward, Kolhapur.

2. Shri. Sharad Krishnarao Mandlik,
Age: 63 years, Occ: Service,
R/o: 372/4, Rajarampuri 14th lane,
E ward, Kolhapur.
3. Shri. Dipak Krishnarao Mandlik,
Age: 60 years, Oce: Service,
R/o: 372/4, Rajarampuri 14th lane.
E ward. Kolhapur.
4. Shri. Ravindra Krishnarao Mandlik
Age:58 years, Occ: Civil Engineer,
R/o: 372/4, Rajarampuri 14th lane,
E ward, Kolhapur.
5. Shri. Balraj Digambar Jadhav,
Age: 45 years, Oce: Business,
R/o: C.T.S. No. 1383. A Ward
Shivaji Peth, Kolhapur.
6. Shri. Nitin Hindurao Mandlik,
Age: 54 years, Occ: Business,
R/o: Plot No. 38, Sanmitra Housing
Society, Katekar Mala, Rajarampuri,
Kolhapur.

..Respondents

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Mr. Drupad S. Patil a/w Mr. Rugved R. Kinkar, Advocate for Applicant in CRA/635/2024.

Mr. Abhijit M. Adagule a/w Ms. Ketaki P. and Ms. Manjiri K., Advocate for Applicant in CRAFT/5091/2025.

Mr. Chetan G. Patil a/w Bhushan Mandlik a/w Bhushan Jadhav, Advocate for Respondents.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 26th SEPTEMBER, 2025.

PRONOUNCED ON : 14th OCTOBER, 2025.

JUDGMENT:-

1. The applicants impugn order dated 19.11.2024 passed by Civil Judge Senior Division, Kolhapur below Exhibit-33 in Regular Civil Suit

No.781/2024, whereby their prayer for rejection of plaint under Order VII Rule 1 of Code of Civil Procedure is rejected.

2. The respondent nos.1 to 4 (original plaintiffs) instituted Regular Civil Suit No.781/2024 before Civil Judge Senior Division at Kolhapur seeking declaration that construction permission dated 27.05.2024 issued by defendant no.2-Municipal Corporation, Kolhapur is invalid, illegal and *ultra vires* and for decree of perpetual injunction against defendant no.1 to not to raise construction in suit properties and restore suit properties 1B and C to its original position.

3. In short it is contention of plaintiffs that suit properties forms part of land City Survey No.372/4. One Baburao Mandlik was original owner. The defendant no.3 acquired ownership under Gift Deed of suit property at Serial No.1. He transferred same in favour of defendant no.1 under registered sale deed dated 22.01.2021. On 27.05.2024, defendant no.1 obtained construction permission from defendant no.2.

4. It is contention of plaintiffs that construction permission is invalid and same is granted without following due process of law by relying upon wrong measurement map. The area of suit property 1(A) is wrongly mentioned. The area of road is not deducted as per UDCPR. The forged map is prepared by respondent no.2-Corporation. The area of plot nos.2A and 2B is wrongly mentioned in verification report prepared by Corporation while granting construction permission. The

application of defendant no.1 seeking construction permission was earlier rejected on 29.12.2021 for non-removal of defects, but later on respondent-Corporation entertained defective application and granted permission. According to plaintiffs, for aforesaid reasons construction permission needs to be declared invalid.

5. The defendants appeared in suit. The defendant nos.1 and 2 filed application seeking rejection of plaint under Order VII Rule 11 of Code of Civil Procedure below Exhibits-44 and 33 respectively contending that jurisdiction of Civil Court to grant relief of declaration in respect of construction permission is barred under Section 149 of Maharashtra Regional and Town Planning Act, 1966 (for short 'MRTP Act'). Thus, first prayer in suit seeking declaration against construction permission is liable to be rejected at threshold. The second prayer for injunction is consequential in nature, eventually, plaint is liable to be rejected under Order VII Rule 11 of Code of Civil Procedure.

6. The Trial Court rejected both applications under premise that although suit is barred under Section 149 of MRTP Act, some of reliefs of civil nature can be granted based on statement made in plaint and partial rejection of plaint is not permissible. Therefore, when one relief is barred by law and other reliefs are sustainable before Civil Court, plaint cannot be rejected.

7. Mr. Dhruvad Patil, learned Advocate appearing for applicant (defendant no.1) would submit that plaintiffs are not entitled for declaratory relief in respect of construction permission granted by Planning Authority under MRTP Act. Any such suit is barred under Section 149 of MRTP Act, Trial Court has rightly observed in paragraph no.28 of impugned order that declaration in respect of construction permission cannot be granted by Civil Court being barred by Section 149 of MRTP Act. However, erroneously observed that relief of perpetual and mandatory injunction claimed in respect of encroachment can be considered. Mr. Patil would submit that once prayer (A) regarding declaration is barred by law, consequential prayers for injunction cannot be entertained. The suit will have to be treated as barred by law and plaint is liable to be rejected. Mr. Patil heavily relied on exposition of law by Supreme Court in case of *Padhiyar Prahladji Chenaji Vs. Maniben Jagmalbhai and Ors.*¹ to contend that once plaintiff held dis-entitled for substantive relief of declaration, relief of injunction cannot be granted being consequential. He would further rely upon observations of this Court in case of *Arihant Construction Vs. Subhash Kesharmal Barlota and Others*² to contend that when suit is hit by Section 149 of MRTP Act, merely because plaintiff raised dispute over permission granted by Corporation, suit cannot be entertained and in such case, plaint deserves to be rejected. Further relying upon observations of this court

¹ (2022) 12 SCC 128.

² 2015 (6) Mh.L.J. 262.

in case of *Sarina Esmeralda Lopez Vs. Vijay Goverdhandas Kalantri and Another*³ he submits that mere use of words illegal, bad in law as regards to construction permission would not be sufficient to maintain suit seeking declaration in light of bar under Section 149 of MRTP Act. Further relying upon observations in case of *Satish s/o Gayacharan Trivedi Vs. Dr. Gopal Ramnarayan Mundhada and Others*⁴ he submits that Civil Court has no jurisdiction to go into validity of construction permission and person aggrieved by any permission can always move Planning Authority to revoke and modify such permission under Section 51 of MRTP Act.

8. Mr. Abhijit Adagule, learned Advocate appearing for applicant-Corporation adopts arguments advanced by Mr. Drupad Patil and supplements him contending that bar under Section 149 of MRTP Act clearly attracts, when suit is instituted against Corporation seeking declaration against construction permission issued under provision of MRTP Act.

9. Per contra, Mr. Chetan Patil, learned Advocate appearing for respondents/plaintiffs supports impugned order. He would submit that bar under Section 149 of MRTP Act would not apply, since Civil Court has jurisdiction to entertain grievance in relation to failure to comply with statutory provision. The jurisdiction of Civil Court is available for determining question if infirmity in action impugned, goes to root of

3 2015 (2) Mh.L.J. 603.

4 2015 (5) Mh.L.J. 463

proceeding, making it invalid or where basic procedural requirements which are vital nature have not been followed. He would submit that in present case, there are specific allegations of malafides and transgression of powers of authority under Act or Rules. Further fraud is alleged against Corporation. Therefore, exclusion of jurisdiction of Civil Court cannot be inferred. The Civil Court upon recording of evidence can rule upon, if provisions of Act have not been complied with or statutory authority has not acted in conformity with fundamental judicial procedure. In support of his contentions, he relies upon observations of this Court in case of *Municipal Corporation of Greater Mumbai Vs. Rajendra Phulchand Gupta and Others*⁵, *Qari Mohammed Zakir Hussain and Others Vs. Municipal Corporation of Greater Mumbai and Others*⁶ and observations of this Court in case of *Kishor S/o Ramalu @ Rambhau Telang Vs. The Municipal Commissioner, Nagpur Municipal Corporation, Civil Lines, Nagpur and Ors.* (Second Appeal No.491/2012 decided on 20.01.2015).

10. Having considered submissions advanced by learned Advocates appearing for respective parties, core issue that arises for consideration in these Civil Revision Applications is whether looking to contents of plaint and prayer incorporated therein suit of plaintiffs is completely barred under Section 149 of MRTP or whether it can still be maintained for partial relief of injunction.

⁵ (2022) 4 AIR Bom R 164.

⁶ (2002) 2 Bom CR 98.

11. Perusal of plaint would show that plaintiffs have sought declaration against construction permission dated 27.05.2024 issued by respondent-Corporation being illegal and invalid and further seek perpetual injunction against defendant no.1 from raising any sort of construction. The plaintiffs averred that construction permission is invalid firstly for reason that initially application for construction permission dated 29.12.2021 moved by defendant nos.1 and 2 was rejected on 08.02.2022. Thereafter, it has been granted on 13.12.2023 on the basis of incorrect documents. The defendant had not removed deficiencies shown in communication dated 08.02.2022. Further although CTS No.372/4/2 is divided in two parts, it is shown as one plot. The area of suit property 1A has been wrongly shown. The boundaries are wrongly shown in map. The area shown in construction map is inconsistent with measurement map dated 26.03.1987. As such, construction permission is granted on basis of incorrect and incomplete documents or same has been obtained by misrepresentation to Corporation.

12. Looking to nature of objection to construction permission dated 27.05.2024, it is difficult to hold that respondent no.2 has issued construction permission without following due process of law. Albeit, if plaintiffs alleges misrepresentation on the part of defendant no.1 while obtaining construction permission from defendant no.2, it is always open for them to approach Planning Authority and seek to revoke or

modify such permission in terms of Section 51 of MRTP Act as observed by this Court in case of *Digambar Sakharam Tambolkar another Vs. Pune Municipal Corporation others*⁷.

13. In case of *Qari Mohammed Zakir Hussain & others Vs. Municipal Corporation of Greater Mumbai and others*⁸, Single Judge of this Court observed that “*if the allegation is that the act done or intended to be done by the concerned authority is the result of fraud, collusion or mala fide and is clearly in transgression of the powers conferred on that person or authority under the Act or Rules, in such a case, the allegation would be actionable, before the Civil Court being one of civil nature to be tried only by the Civil Court by virtue of section 9 of the Code of Civil Procedure Code*”. It is further observed that “*it is also well settled that even if the jurisdiction is so excluded the Civil Courts have jurisdiction to examine into the issues where the provisions of the Act have not been complied with, or statutory Tribunal has not acted in conformity with the fundamental judicial procedure. It is, therefore, dependent on allegations in plaint if such allegations are sufficient to prima facie form opinion that action impugned is malafide or in transgression of authority.*”

14. In case of *Kishor Ramalu @ Rambhau Telang Vs. The Municipal Commissioner, Nagpur Municipal Corporation, Civil Lines, Nagpur and Others* (Second Appeal No.491/2012 dated 20.01.2015) this Court

⁷ 1987 Mh.L.J. 419.

⁸ (2002) 2 Bom C.R. 98.

observed that “*despite exclusion of jurisdiction of the Civil Court, where the grievance is in relation to failure to comply with statutory provisions, such cases can be examined by the Civil Court.*”

15. In case of ***Municipal Corporation of Greater Mumbai Vs. Rajendra Phulchand Gupta and Others***⁹ this Court while considering bar under Section 433A of Maharashtra Municipal Corporation Act to the jurisdiction of Civil Court observed as under:

“10. A plea of bar to jurisdiction of the Civil Court to entertain and decide the challenge to a notice under section 260 of the said Act on the limited grounds, has to be considered having regard to the contentions raised in the plaint, the averments disclosing the cause of action, and the reliefs sought for therein. All such averments must be considered as a whole and not in isolation. The plaint must contain all such statements of material facts, as are necessary to invest such jurisdiction with the Civil Court. The statements of facts must be very clear and specific and not vague. The absence of a single material fact of jurisdiction, would entail the consequences of dismissal of suit, as barred by section 433-A of the said Act.

13. Thus, the aforesaid judgments, cull out the following limited grounds on which notice under Section 351 or 354A, may be questioned in the suit, when;

- (a) act of issuance of notice is nullity,*
- (b) the authority issuing such a notice, has not acted in conformity with the fundamental judicial procedure.*
- (c) notice has been issued by misusing the power; and*
- (d) offending act has not been done in good faith.”*

16. In case of ***Sarina Esmeralda Lopez Vs. Vijay Goverdhandas Kalantri and another***¹⁰ while considering bar under Section 149 of MRTP Act this Court observed that if there is jurisdictional error

⁹ (2022) 3 Bom C.R. 769.

¹⁰ 2015 (2) Mh.L.J. 603.

committed by authority, then a suit would lie which can be said to be an exception to the general proposition that bar under Section 149 of the MRTP Act would operate.

17. Cumulative reading of exposition of law by this Court would show that although jurisdiction of Civil Court is barred under Section 149 of MRTP Act, Civil Court is not powerless to examine action of Planning Authority, if it is within parameters of jurisdiction conferred upon them and whether such power is exercised with due regard to fundamental procedural aspects. Apart from that, if act of officers of Planning Authority is in the nature of fraud, in collusion with beneficiaries or caused prejudice to third party, Civil Court can always step into and prevent further damage or injury likely to be caused to aggrieved person.

18. The impugned order records that defendant no.2-Corporation acted on map prepared by TILR while granting construction permission. Apparently, measurement map relied upon for grant of construction permission is dated 26.03.1987. It is contention of plaintiffs that later on some area of property no.1A has been deducted as per UDCR, but such deduction is not discernible from record. Pertinently, plaintiffs never raised grievance as to lay out plan/measurement map of year 1987, although he alleges that area shown in lay out plan/measurement plan of year 1987 is wrongly mentioned. The aforesaid observations of Trial Court would show that

plaintiff may have some case to move authorities for recall of construction permission, if they wish to allege misrepresentation on part of defendant no.1, but averments in plaint are not sufficient to hold that respondent no.2-Corporation acted beyond its authority or relied upon fraudulent documents at the behest of defendant no.1. In such case, bar under Section 149 of MRTP Act will have to be applied and relief of declaration sought in respect of construction permission has to be held beyond purview of Civil Court's jurisdiction.

19. Next question that arises for consideration is whether plaintiffs can continue suit for relief of perpetual injunction against defendants, once it is found that their claim for declaration against construction permission cannot be entertained by Civil Court. The Supreme Court in case of *Padhiyar Prahladji Chenaji* (supra) considered scheme of Sections 31, 34, 38 and 41 and examined whether relief of permanent injunction can be granted when first prayer of declaration or cancellation of sale deed is held to be barred by limitation. It is observed that in suit where multiple reliefs are claimed, grant of injunction may still be permissible, if injunction is independently sought independent of primary relief of declaration. However, when permanent injunction is sought as substantive relief, independent of declaration, it is open for Court to entertain prayer for permanent injunction.

20. In present case, if plaint is read as whole it can be observed that plaintiffs claims that CTS No.372/4 admeasuring 20 gunthas was owned by predecessor in title of plaintiffs and defendant no.3. According to plaintiffs, 6300 sq. ft. area gifted by original owner Baburao to defendant no.3 under registered gift deed dated 03.11.1966, which has been purchased by defendant no.3 under registered sale deed dated 22.01.2021. According to plaintiffs, sale deed dated 31.05.2021 executed by defendant no.3 in favour of defendant no.1 is without their consent. The suit property no.1A consists of common area, but defendant no.1 has initiated construction on the basis of illegal construction permission.

21. The aforesaid pleading would depict that plaintiffs do not dispute that defendant no.3 was owner of area admeasuring 6300 sq. ft. and defendant no.1 acquired ownership from him under registered sale deed dated 22.01.2021. Pertinently, there is no challenge to sale deed or title of defendant nos.1 and 3. The entire suit is based on challenge to construction permission.

22. In that view of matter, relief of injunction as claimed by plaintiffs cannot be said to be independent and substantive relief, thus once it is held that suit is barred qua declaratory relief against construction permission and relief of permanent injunction is consequential, it cannot be independently considered. Even otherwise, plaintiffs cannot have independent cause of action to claim relief of perpetual

injunction, once their challenge to construction permission is held to be barred by law. In that view of matter, Civil Revision Applications deserves to be allowed. Hence, following order:

ORDER

a. Civil Revision Applications are allowed in terms of prayer Clauses (a), (b), (c) and (d).

(S. G. CHAPALGAONKAR)
JUDGE