



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.7530 OF 2022

PETITIONER

(Ori. Plaintiff)

:- Manohar Namdeo Narkhede,
Aged 63 years, Occu: Agriculturist &
business R/o Village Borakhedi, Tal:
Motala, Dist: Buldhana.

..VERSUS..

RESPONDENTS

(Ori. Respondent)

- :-** 1) Ishwar Munshiram Dhabe,
Aged 36 years, Occu: Business,
Nandura Road, Ward No.1 Near Babanrao
High School Tal: Motala, Dist: Buldana
- 2) The Gram Panchayat Borkhedi, Through
Sarpanch/Secretary Tahl: Motalal, Dist:
Buldhana.

Mr. R.L. Khapre, Senior Adv. a/b R. Tajne, Adv. for Petitioner.

Mr. Anand Jaiswal, Senior Adv. a/b Ms. Radhikar Bajaj, Advocate for respondent
No.1.

Mr. S.O. Ahmed, Advocate for Respondent No.2.

CORAM : ROHIT W. JOSHI, J.

DATE : 17/10/2025

ORAL JUDGMENT :

1. Heard.

2. **Rule.** Rule is made returnable forthwith. Heard finally
with consent of learned counsel for the respective parties.

3. The controversy pertains to a layout carved over land bearing Survey No. 45/1, Gat No. 72, situated at Village Borakhedi, Tal. Motala, Dist. Buldhana. The petitioner claims to be the owner of Plot No.1 in the said layout, admeasuring 70 ft. X 78 ft. According to the petitioner, the layout was initially sanctioned by the Competent Authority vide order dated 22.03.1963, and subsequently, revised vide order dated 11.09.1963, pursuant to an application made by the erstwhile landowner. The petitioner asserts that Plot No.1, which is the subject matter of the controversy, was initially sold by the District Central Cooperative Bank, Malkapur, Dist. Buldhana, vide sale deed dated 12.09.1963. The property subsequently, changed hands twice and the petitioner purchased it vide sale deed dated 18.12 1973.

4. Mr. Khapre, learned Senior Advocate for the petitioner draws attention to the sale deed and states that although the plot number is not specifically mentioned in the sale deed, the property can be identified by referring to the boundaries that are mentioned in the sale deed. He contends that the respondent/Gram Panchayat had initially issued notice for removal of encroachment under Section 53 of the Maharashtra Village Panchayats Act, 1959

(hereinafter referred to as “Act of 1959”) on 04.12.2017. He states that this notice was issued placing reliance on earlier sanctioned layout plan dated 22.03.1963 and completely ignoring the revised plan dated 11.09.1963.

5. It is not in dispute that the earlier notice for removal of encroachment was subject to the challenge by filing statutory appeal before the Divisional Commissioner which was dismissed vide order dated 06.02.2018. This order dated 06.02.2018, was challenged before this Court vide Writ Petition No.939 of 2018. The said petition was dismissed vide judgment and order dated 19.07.2022. Subsequently, an application for review of the said judgment and order was filed which was also rejected vide order dated 11.08.2022.

6. In the meantime, on 01.08.2022, while the review was pending, the petitioner has filed Regular Civil Suit No.88 of 2022, *inter alia*, seeking a declaration of ownership in respect of the suit plot and a perpetual injunction restraining the defendant in the said suit from taking any action for removal of the alleged encroachment based on the earlier sanctioned layout plan dated 18.03.1963. In the said suit, an application for temporary injunction was filed which came to be rejected by the learned trial Court vide order dated

17.08.2022. The petitioner preferred an appeal being Misc. Civil Appeal No.20 of 2022, which came to be dismissed on 21.10.2022. The said orders are subject matter of challenge in the present petition.

7. Notice in the present petition was issued vide order dated 06.12.2022. While issuing notice in the matter, this Court has also directed the parties to maintain *status quo* with respect to structure standing on the suit property. It is observed that, the notice for demolition is issued on the basis of initial layout plan dated 18.03.1963 and not as per the revised layout plan dated 11.09.1963. The learned Senior Advocate for the petitioner contends that the foundation on the basis of which, the notice for removal of encroachment is issued is the map of the layout which was sanctioned as per the earlier order dated 18.03.1963. The learned Senior Advocate for the petitioner contends that the order of revising of the layout map, dated 11.09.1963 has not been taken into consideration and therefore, it is not open for the defendant/Gram Panchayat to take action for removal of the alleged encroachment. He contends that the notice is issued pursuant to a sanctioned layout plan which is no longer in existence. The learned

Senior Advocate therefore, states that the learned trial Court has erred in refusing to grant of temporary injunction and learned First Appellate Court has erred in failing to appreciate the said material on aspect.

8. *Per contra*, Mr. Jaiswal, learned Senior Advocate appearing for the respondent No.1 states that both the Courts have concurrently held that the construction of the petitioner is on the road and have therefore, rightly rejected the application for temporary injunction. It is pointed out that the petitioner has failed in his challenge to the notice for removal of encroachment in as much as the statutory appeal under Section 53 (3-A) of the Act of 1959, came to be dismissed by the Competent Authority and petition arising out of the said order is also dismissed. After dismissal of Writ Petition No.939 of 2018, the respondent/Gram Panchayat issued fresh notice for removal of encroachment on 28.07.2022. The Civil Suit out of which the present petition arises was filed on 01.08.2022. However, the notice dated 28.07.2022, is not impugned in the said suit.

9. It will be pertinent to state that the petitioner has filed statutory appeal under Section 53(3-A) of the Act of 1959,

challenging the said notice dated 28.07.2022, which came to be dismissed vide order dated 16.09.2022. Against this order dated 16.09.2022, a petition being Writ Petition No.6036 of 2022 was filed which was dismissed as withdrawn granting liberty to the petitioner to avail appropriate remedy against the order dated 16.09.2022, by which the appeal was dismissed. The order dated 16.09.2022, is not challenged by the petitioner before any Authority or Court of law. The said order has thus assumed finality.

10. The learned Senior Advocate for the petitioner contends that a prayer for decree of perpetual injunction not to take any steps for removal of encroachment pursuant to sanctioned layout map dated 18.03.1963 is made in the plaint and therefore, challenge to the notice dated 28.07.2022, is implicit in the said suit. The learned Senior Advocate for the respondent No.1 and also Mr. Ahmed, learned Advocate for the respondent No.2 strongly oppose the contention pointing out that the notice dated 28.07.2022, was in fact challenged by way of filing statutory appeal and since, the appeal is dismissed on merits and the said order has assumed finality, the contention that is sought to be raised is not open for the petitioner. The learned Advocate draws attention to the

Paragraph-16 of the order passed by the learned Trial Court wherein the learned trial Court has observed that during the course of the arguments, the learned Advocate for the petitioner/plaintiff made a submission that notice issued by the Gram Panchayat was not under challenge in the suit. It is contended that since the notice is not challenged, injunction cannot be granted restraining the Gram Panchayat from taking steps in accordance with the said notice.

11. The facts of the case will indicate that the petitioner has failed in his challenge to the earlier notice for removal of encroachment in as much as the appeal preferred was initially dismissed by the Competent Appellate Authority and the said order came to be confirmed by this Court in Writ Petition No.939 of 2018 which was dismissed vide order dated 19.07.2022 and application seeking review of the said order is also rejected vide order dated 11.08.2022. After dismissal of the petition, fresh notice for removal of encroachment was issued by the Gram Panchayat on 28.07.2022. This notice was challenged by filing statutory appeal which was dismissed on 16.09.2022. The order dated 16.09.2022 was challenged before this Court in Writ Petition No.6036 of 2022 which was dismissed as withdrawn vide order dated 03.10.2022,

granting liberty to the petitioner to avail appropriate remedy against the said order dated 16.09.2022. The order dated 16.09.2022 is not challenged by the petitioner. Thus, the challenge to the notice dated 28.07.2022 has also failed.

12. In view of the above, it must be held that the case of the petitioner is hit by principles of *res judicata*. Since the plaintiff has challenged the notices issued by the Gram Panchayat unsuccessfully on two occasions, the plaintiff is not entitled to order of temporary injunction against the Gram Panchayat restraining it from taking further action pursuant to the said notice. The learned Courts have rightly taken into consideration this aspect of the matter while rejecting the application for grant of temporary injunction and dismissing the appeal arising out of the said order.

13. It will also be pertinent to mention here that the sale deed in favour of the petitioner does not mention the plot number and the description of the suit property does not give a clear picture about the particulars of the suit property. The learned Trial Court has rightly held that the plaintiff has failed to make out *prima facie* case on this count also. Having perused the plaint averments and the sale deed, this Court finds no reason to take a different view of

the said *prima facie* opinion expressed by the learned Trial Court.

14. The thrust of the argument on the learned Senior Advocate is on an order dated 12.06.2025, passed by the Additional Chief Secretary in Appeal No.2017/Case No.318/J-9, Case No.476(09)2024/AVP (आवृत्ति), the learned Senior Advocate for the petitioner contends that the learned Secretary has directed that fresh inquiry conducted in the matter with respect to the initial layout sanction plan dated 22.03.1963 and revised layout sanction plan dated 11.09.1963. The learned Senior Advocate contends that, in view of the said order, the interim order earlier granted by this Court should be confirmed by allowing the petition. He states that till the issue with respect to the two layout sanction plans is sorted out, the respondent/Gram Panchayat should not be permitted to take further steps as per the notices issued for removal of encroachment. The said contention is also liable to be rejected. In this regard, it will be appropriate to reproduce Paragraph Nos.15 and 16 of the judgment dated 19.07.2022 passed in Writ Petition No.939 of 2018, which are under:-

“15. Insofar as the contention pertaining to the basis of the measurement being a map, which was already cancelled and that a subsequent map and approved lay out was not taken into consideration, this Court has perused the documents on record, as also the order passed by the Deputy Director of

Land Records, whereby the appeals filed by the petitioners were dismissed on 15/11/2021. The said specific contention was referred to in the said order and after taking into consideration the registered sale deed on which the petitioners themselves placed reliance, it was found that the said document could in no manner support the contentions raised on behalf of the petitioners. Therefore, it became necessary for this Court also to peruse the aforesaid sale deed dated 18/12/1973, executed in favour of father of petitioner No.4. In the said sale deed, there is no reference to any specific plots being sold. Only area of the property being sold is mentioned and certain boundaries are also stated. There is nothing in the said document to support the contention of the petitioners that the encroachment alleged against them is demonstrated to be false or unsustainable and that the material upon which the authorities have relied, is not supported by the documents on record.

16. The report of the office of the Inspector of Land Records clearly indicates as to the manner in which the measurement was carried out in the presence of the petitioners and to what extent it was found that there was indeed encroachment on part of the public road within the concerned layout. This Court is not able to appreciate as to how the petitioners can take advantage of a purported subsequent approved layout to demonstrate that the theory of encroachment of structures of the petitioners cannot be supported by the material on record. The map on which the petitioners have placed reliance, even if it were to be considered, is unable to dislodge the report specifically prepared by the office of the Inspector of Land Records on the order passed by the Collector on 21/09/2017.”

15. The contention with respect to the revised sanctioned plan is dealt with by this Court in the earlier round of litigation and it is specifically held that the purported subsequent layout plan also does not support the case of the petitioner. In that view of the matter, the contention that further action should be stayed till appropriate decision is taken in the matter as per order dated

12.06.2025, passed by the Additional Chief Secretary is also liable to be rejected.

16. In view of the above, it is held that the plaintiff has failed to make out any *prima facie* case for grant of temporary injunction against the respondent/Gram Panchayat. The Gram Panchayat cannot be restrained from proceeding with implementation of notices issued under Section 53 of the Act of 1959. However, the Gram Panchayat shall only be permitted to remove the encroachment over public property.

17. As regards the respondent No.1, in the considered opinion of this Court, temporary injunction needs to be granted in favour of the petitioner against the respondent No.1 restraining the respondent No.1 from disturbing possession of the petitioner over the suit property without following due process of law since the petitioner appears to be settled possession of the suit property. The petition is partly allowed in the following terms :-

- i) Writ Petition is **partly allowed**.
- ii) Application for grant of temporary injunction filed by the petitioner vide Exh.5 in Regular Civil Suit No.88 of 2022, pending on the file of the Civil Judge Senior

Division, Malkapur, is rejected against the respondent No.2/Gram Panchayat, Borakhedi.

- iii) The order dated 17.08.2022, passed by the learned Civil Judge Senior Division, Malkapur, on application at Exh.5 in Regular Civil Suit No.88 of 2022 and judgment and order dated 21.10.2022, passed by the learned District Judge-1, Malkapur, in Misc. Civil Application No.20 of 2022, are maintained against the respondent No.2/Gram Panchayat, Borakhedi.
- iv) The respondent No.1/Ishwar Munshiram Dhabe is restrained from disturbing possession of the petitioner Manohar Namdeo Narkhede over the suit property without following due process of law, till final decision of the Regular Civil Suit No.88 of 2022, pending on the file of the learned Civil Judge Senior Division, Malkapur.
- v) At this stage, Mr. Khapre, learned Senior Advocate for the petitioner makes a motion to extend the interim protection granted by this Court vide order dated 06.12.2022, for a further period of six weeks. The motion is strongly opposed by Mr. Ahmed, learned

Advocate for the Gram Panchayat. However, having regard to the fact that the interim protection is operating for almost two years and ten months, in the considered opinion of this Court, it will be expedient to extend the interim protection upto **30.11.2025**.

Rule is made absolute in above terms. No order as to costs.

(ROHIT W. JOSHI, J.)

C.L. Dhakate