

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4711 OF 2025

Jaywant Krushi Seva Kendra Through The Proprietor
VERSUS
The Chief Officer, Nagar Panchayat Office

Mr. Anil Anturkar, Senior Advocate a/w Mr. Harshvardhan
Suryavanshi a/w Mr. Kashish Chelani i/b Mr. Tanaji Mhatugade,
advocate for the Petitioner

Mr. Milind Deshmukh a/w Mr. Vishwajit Nalawade for Respondent

CORAM : SACHIN S. DESHMUKH, J.

DATE : 29th APRIL, 2026.

P. C. :

1. The Petitioner raises the challenge to the order dated 28/03/2024 rendered by the Extra Jt. District Judge, Vaduj in Misc. Civil Appeal No. 31/2019 endorsing the order of the Trial Court dismissing the Application for interim injunction.

2. Petitioner is the original Plaintiff and the Respondent is the Defendant. (Hereinafter the parties shall be referred to by their original status in the Suit).

3. The Plaintiff presented the Regular Civil Suit No. 235 of 2003 against the Defendant seeking simplicitor injunction in relation to

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the Suit property before the Jt. Civil Judge Junior Division, Vaduj. In the interregnum, the Plaintiff filed an Application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 for interim injunction against the Defendant which came to be rejected.

4. Aggrieved by the same, the Plaintiff, presented Misc. Civil Appeal No. 31/2019 before the Extra Jt. District Judge, Vaduj which came to be dismissed by the order under challenge. As such, the Plaintiff is before this Court.

5. Learned counsel for the Petitioner/Plaintiff submits that Judgment and Order under challenge are unsustainable in law. The Appellate Court has wrongly relied upon the Commissioner's report. The Plaintiff does not claim that he is the absolute owner of the Suit property, however, it ought to be considered that the said property is allotted to him by the District Collector. In case the Defendant wants the property for public purpose, the same ought to be in accordance with the statutory provisions.

6. It is further submitted by the learned Counsel for the Petitioner that since the land is allotted by the State Government, as such, it will be open for the State Government only to take

appropriate decision with regard to the possession of the suit property. In absence of such decision by the State, it is not open for the Respondents to take any action in relation to the land allotted to the petitioner.

7. *Per contra* learned counsel for the Respondent-Defendant submits that the Nagar Panchayat is the State instrumentality and the work undertaken is in the larger interest of the village. As such, individual interest will not outweigh the public interest. Therefore, both the Courts below have taken a reasonable and justifiable view which does not warrant interference, much less, at an interlocutory stage

8. The learned counsel for the respondent/Nagar panchayat further submits that the work of public interest is halted due to the encroachment committed by the Petitioner on the public road as well as drainage, as such, order under challenge deserves to be endorsed.

9. Upon considering the submissions of the litigating sides, it indicates that the Plaintiff has instituted suit for injunction against the Defendants asserting that the Suit property is allotted by the Collector and the Defendant cannot take over the same without

following due process of law. On the contrary, it is contended by the Defendant that the suit property is a Government land and the plaintiff has no absolute right over the same.

10. In order to settle the controversy between the parties, the Trial Court appointed a Court Commissioner and accordingly the report is submitted which *prima facie* indicates that the Plaintiff has made a certain construction which occupies the portion of public road. This Court cannot overlook the fact that the illegal construction or encroachment is resulting into hindrance to the public road and work of drainage.

11. The cardinal principles governing the grant of injunctions are dealt in detail in the verdict of **Dalpat Kumar And Anr. vs Prahlad Singh And Ors AIR1993 SC 276B**, wherein the apex Court has held as follows:

“4. It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be

established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.”.

“5...Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in “irreparable injury” to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that “the balance of convenience” must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.”

12. Apart from the aforesaid aspect, the stipulations in the letter of allotment makes it abundantly clear that in the event of requirement of any portion for the public purpose grant of land or the portion will be canceled and the land will stand resumed by the Government. Having accepted the stipulation in the letter of allotment, it is not open for the petitioner to contend contrary. Thus, the submission put forth by the learned counsel for the petitioner that unless the action of the Nagarpanchayat of construction of the public road and drainage is approved by the State Government, it is not open for the local planning body, a State instrumentality to obstruct the possession of the petitioner having qualified right to occupy the subject land does not warrant consideration.

13. The factors of comparative hardship or inconvenience to the general public essentially outweighs the interest of an individual. In absence of any demonstrable material to satisfy that the non interference by the Court would result in irreparable injury to the parties seeking relief, the Court's below have rightly declined to exercise discretion in favour of the petitioner and the same does not warrant interference by this Court.

14. It is a settled principle of law that where the Trial Court and the Appellate Court below have concurrently declined to exercise discretion in favour of the Petitioner, being an appeal against exercise of discretion, this Court would be cautious to interfere, particularly in view of the judgment of the *Hon'ble Apex Court in Wander Limited And Another vs. Antox India P. Ltd. 1990 (Supp) SCC 727*, in particular, para 13 and 14 thereon, which reads as under :

“13. On a consideration of the matter, we are afraid, the Appellate Bench fell into error on own important propositions. The first is a misdirection in regard to the very scope and nature of the appeals before it and the limitations on the powers of the Appellate Court to substitute its own discretion in an appeal preferred against a discretionary order. The second pertains to the infirmities in the ratiocinations as to the quality of Antox's alleged user of the Trade-Mark on which the passing-off action is founded. We shall deal with these two separately.

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different

from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. v. Pothan Joseph* :

... These principles are well established, but as has been observed by Viscount Simon in *Charles Oseption & Co. v. Johnston* the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case.”

15. In view of the aforesaid facts and precedents, this Court is of the opinion that the public interest essentially outweighs the individual interest. Mere allotment of land, with qualified right, does not make the Plaintiff absolute owner of the suit property and in any case, cannot be allowed to carry out illegal construction. Also, the claim of Defendant against the said allotment is subjudiced before the Collector. Thus, in view of the concurrent findings rendered by the Courts below and in the absence of any perversity,

the Petition being devoid of merits, does not warrant consideration.

16. At this stage, the counsel for the petitioner has requested to effect stay to this order.

17. For the reasons aforestated herein, the same does not warrant consideration, resultantly, stands rejected.

[SACHIN S. DESHMUKH, J.]