

In CR No. 3132/22
For Private us
Decree

1

महामुद्रा (अ.८७)-२-२०१०-२,००,०००-पीएच*
क्रि.प्र.कोड., होबुल १, परिशिष्ट बी-क.१:
शा.प्र.वि.अ.व्या.वि., क., पसदीबल/११८०/४५ १०/माह,
दि.४-४-१९८९ अन्वये प्रकाशित]

अकोल मुकदम्यात मुकदम्यात
(ऑर्डर २०, पाने, ६, ७),
जोई म.र., पुरवणी ह,
परिशिष्ट १)

Photo 05
Charges Rs. 07
Total Rs. 35
दिवानी अ. ३७ व.
Civ. ११११ ०२:१२:२२

हकुमनामा.

IN THE COURT OF 5th JT. CIVIL JUDGE SR. DN., AKOLA

(Presided over by N. S. Puri)

REGULAR CIVIL SUIT NO.358/2021.

{MHAK020042462021}

B. G. Steel & Infra,

Exh.36

A registered partnership firm,
Duly registered with the Registrar of
Firms at Nagpur, through partner,
Manoj s/o Mohanlal Bilala,
Aged about 46 years, Occ. Business,
R/o. Gita Nagar Bye-pass, Akola

... **PLAINTIFF.**

-V E R S U S-

Akola Municipal Corporation, Akola

Through Commissioner, Akola

... **DEFENDANT.**

CLAIM : SUIT FOR MANDATORY INJUNCTION.

Appearance :-Shri N. M. Agrawal, Ld. Advocate for the plaintiff.

Shri M. A. Adil Ld. Advocate for the defendant.

The present suit is filed for mandatory injunction.

Description of the suit, is as under :-



2] The subject matter is situated at mouje Akkalkot, Tq. and Dist. Akola, out of field Survey No. 2/1, admeasuring 11100 Sq. mtrs., situated on Washim Bye-pass Square, Balapur Road, Akola, which was converted into non-agricultural commercial building Layout vide Case No. AMC/N.A./01/2015-16.

The fact of the plaintiff's case in nutshell, stated as under :-

3] It is the contention of the plaintiff that the suit property is owned and possessed by him which was converted into non agricultural commercial building layout. The plaintiff was intending to construct the commercial complex on the plot therefore, he has submitted building plan with the defendant on 4.10.2018 alongwith requisite drawing, documents, and plaintiff as also paid building permission and inspection fees of Rs. 3,000/-. Thereafter, plaintiff has received one letter dated 26.10.2018 from the defendant wherein defendant has sought compliance as per the letter.

4] The plaintiff has complied the requirement of defendant. However, in spite of required lapse of time the plaintiff did not receive building sanction, therefore, the plaintiff has issued letter dated 19.1.2019 and 4.2.2019 to the defendant, however, the defendant did not issue the building commencement certificate nor replied the letter given to the defendant.

5] Plaintiff further unfolded the fact that the plaintiff has filed suit against defendant bearing RCS No. 142/2019 for declaration of deem permission. However, after filing of the suit the defendant issued commencement certificate alongwith the sanction plan to the plaintiff on 27.5.2019. The plaintiff has started construction which in substantial progress.

6] Thereafter plaintiff again revise building construction plan for sanction dated 1.3.2021 alongwith payment of requisite permission fee vide receipt no. 9 as demanded by the corporation was paid by the plaintiff. The plaintiff did not receive any communication from the defendant within 60 days from the receipt of revised building construction plan, therefore, as per the provision of law and UDPCR plaintiff revise deem permission in accordance with revise plan submitted by plaintiff for the building construction.

7] The plaintiff further stated that after grant of deem permission plaintiff had issued intimation of claim of deem permission to the defendant by letter dated 25.8.2021 and also requested the defendant to issue one copy of sanctioned plan and commencement certificate. The said intimation was received by the defendant, however, the defendant did not communicate its remark about grant of deem permission to the defendant within 15 days from the receipt of intimation. Therefore, the proposal was approved in view of provisions of clause 2.6.2 of UDPCR2020 and it was then mandatory for the defendant to issue commencement certificate alongwith the one set of duly approved plan. However, defendant failed to comply with the provision, therefore, plaintiff had issued notice under section 487 of the Act. Even though the notice is duly served but defendant failed to comply it. Therefore, plaintiff is compel to file the present suit.



I N. S. Puri, 5th Jt. Civil Judge (S.D.N.), Akola on this 19th day of November, 2022 in presence of Shri. N. M. Agrawal, Advocate for Plaintiff and Shri. M. A. Adil, Advocate for Defendant., I pass the following order:-

ORDER

1. The suit is decreed with cost.
2. It is hereby declared that the plaintiff had received deem permission for the construction of building as per the clause 2.6.2 of UDCPR in respect of application for building sanction, permission submitted with defendant on 1.3.2021 alongwith building plan.
3. The defendant is directed by way of mandatory injunction to issue commencement certificate and building sanction plan in view of clause 2.6.2 UDCPR rules in respect of building sanction plan of plaintiff submitted on 1.3.2021.
4. Decree be drawn accordingly.

Date : 19.11.2022

Sd/-
(N. S. Puri)
5th Jt. Civil Judge S.D., Akola.

DECREE (COST)

वादीचा झालेला	रु.-पैसे	प्रतिवादीचा झालेला	प्रतिवादी करीला रु.-पैसे
1. दाव्यास लापलेले स्टॅम्प	200=00	1. विरुध्द दाव्यास स्टॅम्प	--
2. मुखत्यारनाम्यास स्टॅम्प	10=00	2. मुखत्यारनाम्यास स्टॅम्प	10=00
3. दाखल झालेल्या कागद स्टॅम्प एकुण पुढील बाजुवर दिलेली	--	3. दाखल झालेल्या कागद स्टॅम्प एकुण पुढील बाजुवर दिलेली	--
4. साक्षदारास पोटगी	--	4. साक्षदारास पोटगी	--
5. दाव्यावरील वकील फी विरुध्द दाव्याकरीता वकील फी	150=00	5. दाव्यावरील वकील फी विरुध्द दाव्याकरीता वकील फी	150=00
6. प्रोसेस लागु करणे	--	6. प्रोसेस लागु करणे	--
7. कमिशनर फी.	--	7. कमिशनर फी.	--
8. भाषांतराची फी	--	8. भाषांतराची फी	--
9. नक्कल करण्याची फी.	--	9. नक्कल करण्याची फी	--
10. तहकुबी बाबत दिलेला खर्च	10=00	10. तहकुबी बाबत दिलेला खर्च	70=00
11. वारस दाखल करण्या बाबतच्या अर्जावरील स्टॅम्प	--	11. वारस दाखल करण्या बाबतच्या अर्जावरील स्टॅम्प	--
एकुण	370=00	एकुण	230=00
न दिलेला खर्च : फिर्याद दाव्यावरील कोर्ट फी.	--	न दिलेला खर्च : फिर्याद दाव्यावरील कोर्ट फी.	--
फिर्याद दाव्यावरील प्लीडरची फी.	--	फिर्याद दाव्यावरील प्लीडरची फी.	--
एकुण		एकुण	

आज तारीख 19 नोव्हेंबर, 2022 रोजी माझे सहीनिशी व कोर्टाचे शिक्क्यानिशी दिला.

वरिष्ठ लिपीक-



(एन. एस. पुरी)

५वे सह दिवाणी न्यायाधीश (व.स्तर.)
अकोला.

वादी चे मा.विधिज्ञ
प्रतिवादी करीता

: अॅड. एन. एम. अग्रवाल
: अॅड. एम. ए. आदील

{ हया हुकुमनाम्यातील पक्षकरांना अशी ताकिद देण्यात येते कि, त्यांनी हजार केलेले कोणतेही दस्तऐवज जर ते परत नेले नसतील तर अपिल झाले असल्यास अपिलाचा निकाल झाल्यानंतर नाश करून टाकण्यास पात्र होतील }

TRUE - COPY

Assit. Supdt
C. J. (SD) AKOLA

02/12/22

Compd by M

1) नक्कल करीता अर्ज करण्याची तारीख 22.11.22 वाविय नोव्हेंबर

2) अर्ज पूर्ण झाल्याची तारीख 02.12.22

3) अर्जदारास नक्कल घेऊन न्यायास दिलेली शेवटची तारीख 02.12.22

4) नक्कल द्यायलागेल्या तयार करण्याची तारीख 02.12.22

5) अर्जदारास नक्कल दिल्याची तारीख 02.12.22

होण डिसेंबर

होण
हजार
वाविय

म. जिल्हा अदालत (न्यायिक)
अकोला

02/12/22

In CR NO. 3132/22
For Private Use

Photo 12
Charges Rs. 07
Total Rs. 84/
Date 02-12-22

Presented on : 20.10.2021
Registered on : 25.10.2021
Decided on : 19.11.2022
Duration on : 01 Y, 01 M, 00 D

**IN THE COURT OF 5th JOINT CIVIL JUDGE SENIOR
DIVISION AT AKOLA.**

(Presided over by Narendra S. Puri)

REGULAR CIVIL SUIT NO.358/2021.

{MHIK020042462021}

B. G. Steel & Infra,

Exh.35

A registered partnership firm,
Duly registered with the Registrar of
Firms at Nagpur, through partner,
Manoj s/o Mohanlal Bilala,
Aged about 46 years, Occ. Business,
R/o. Gita Nagar Bye-pass, Akola

... **PLAINTIFF.**

- V E R S U S -

Akola Municipal Corporation, Akola

Through Commissioner, Akola

... **DEFENDANT.**

**CLAIM : SUIT FOR
MANDATORY INJUNCTION.**

Appearance :-

Shri N. M. Agrawal, Ld. Advocate for the plaintiff.

Shri M. A. Adil Ld. Advocate for the defendant.


19/11/22



J U D G M E N T

(Delivered on 19th day of ~~November~~, 2022)

The present suit is filed for mandatory injunction.

Description of the suit, is as under :-

2] The subject matter is situated at mouje Akkalkot, Tq. and Dist. Akola, out of field Survey No. 2/1, admeasuring 11100 Sq. mtrs., situated on Washim Bye-pass Square, Balapur Road, Akola, which was converted into non-agricultural commercial building Layout vide Case No. AMC/N.A./01/2015-16.

The fact of the plaintiff's case in nutshell, stated as under :-

3] It is the contention of the plaintiff that the suit property is owned and possessed by him which was converted into non agricultural commercial building layout. The plaintiff was intending to construct the commercial complex on the plot therefore, he has submitted building plan with the defendant on 4.10.2018 alongwith requisite drawing, documents, and plaintiff as also paid building permission and inspection fees of Rs. 3,000/-. Thereafter, plaintiff has received one letter dated 26.10.2018 from the defendant wherein defendant has sought compliance as per the letter.

4] The plaintiff has complied the requirement of defendant. However, in spite of required lapse of time the plaintiff did not

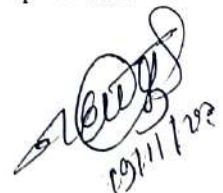
16/11/22
19/11/22

receive building sanction, therefore, the plaintiff has issued letter dated 19.1.2019 and 4.2.2019 to the defendant, however, the defendant did not issue the building commencement certificate nor replied the letter given to the defendant.

5] Plaintiff further unfolded the fact that the plaintiff has filed suit against defendant bearing RCS No. 142/2019 for declaration of deem permission. However, after filing of the suit the defendant issued commencement certificate alongwith the sanction plan to the plaintiff on 27.5.2019. The plaintiff has started construction which in substantial progress.

6] Thereafter plaintiff again revise building construction plan for sanction dated 1.3.2021 alongwith payment of requisite permission fee vide receipt no. 9 as demanded by the corporation was paid by the plaintiff. The plaintiff did not receive any communication from the defendant within 60 days from the receipt of revised building construction plan, therefore, as per the provision of law and UDCPR plaintiff revise deem permission in accordance with revise plan submitted by plaintiff for the building construction.

7] The plaintiff further stated that after grant of deem permission plaintiff had issued intimation of claim of deem permission to the defendant by letter dated 25.8.2021 and also requested the defendant to issue one copy of sanctioned plan and



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commencement certificate. The said intimation was received by the defendant, however, the defendant did not communicate its remark about grant of deem permission to the defendant within 15 days from the receipt of intimation. Therefore, the proposal was approved in view of provisions of clause 2.6.2 of UDPCR2020 and it was then mandatory for the defendant to issue commencement certificate alongwith the one set of duly approved plan. However, defendant failed to comply with the provision, therefore, plaintiff had issued notice under section 487 of the Act. Even though the notice is duly served but defendant failed to comply it. Therefore, plaintiff is compel to file the present suit.

8] The defendant appeared in the suit and filed their written statement (Ex.9) thereby strongly resisted the claim of the plaintiff. It is the contention of the defendant that the present suit is not tenable in the eyes of law as the plaintiff has suppressed the material fact from the court and has not come before the court with clean hands. It is also contention of the defendant that the mandatory notice which is required to file suit not issued therefore, the suit is against law and liable to be dismissed.

9] The defendant further submits that the plaintiff has not made out any case therefore, mandatory injunction cannot be granted and as such the suit is liable to be dismissed with heavy costs.

[Signature]
19/11/2022

10] In view of pleadings and document on record, my Ld. predecessor framed issue below Exh. 10. Same are reproduced along with findings followed by reasons.

<u>Sr. No.</u>	<u>ISSUES</u>	<u>FINDINGS</u>
1.	Does the plaintiff prove that he had received deemed permission for construction of building as per the clause of UDCPR2020 in respect of application dated 01.03.2021 ?	.. Yes
2.	Does the plaintiff prove that he does not receive any intimation within 60 days from 01.03.2021 & as per the rules deemed permission was granted ?	.. Yes
3.	Does the plaintiff entitled for declaration ?	.. Yes
4.	Does the plaintiff entitled for mandatory injunction ?	.. Yes
5.	Does the plaintiff entitled for any other relief as sought ?	.. Yes
6.	What order and decree ?	Suit is decreed with cost.

REASONS

11] To substantiate his case, the plaintiff has adduced his evidence by way of affidavit (Ex.13) and relied on some documentary evidence at Exh. 17 to 23 and 26 and 27. Thereafter plaintiff closed his evidence vide pursis Exh. 28. Defendant not

(Signature)
19/11/22



adduced any evidence.

As to Issue Nos.1 to 6 :-

12] All the issues are interlinked with each other; therefore, they are taken for common discussion.

13] In the present suit very short question involved around which entire suit issues resolved. The plaintiff agitated the issue of deem sanction. The issue of deem sanction goes to the root of matter, therefore, I am taking into it for consideration.

14] To ascertain whether the plaintiff got deem sanction, it is necessary to scrutinized the evidence of plaintiff in the light of 'Unified Development, Control and Promotion, Regulation for Maharashtra' (hereinafter referred as UDCPR).

15] The first sub-question crop for consideration is that whether UDPCR rule/regulation are applicable to the present case. The Chapter 1 regulation no. 1.4 plays vital role, which provides that these regulation shall apply to all development and construction, part construction change of occupancy, reconstruction, development of size and sub division or amalgamation of land, revise permission.

26/11/18
19/11/18

16] Thus, in terms of chapter 1 regulation no. 1.4 rules and regulation incorporated under UDCPR, are applicable to the case at my hand.

17] Chapter 2 regulation no. 2.6 onwords deals with grant or refusal of permission. Regulation 2.6.1 provides that after receipt notice/application the authority may either sanction or refuse the plan or may sanction them with such modification or directions as it may necessary after having recovered the necessary charges/fees and thereupon shall communicate its decision to person giving the notice in the prescribed form.

18] The plaintiff in that context deposed that he has submitted revise building construction plan for sanction vide case No. 14/659/2018-19 dated 1.3.2021. On perusal of Exh. 20 it appears that the plaintiffs contention found corroboration. The plaintiff submits the form for construction building which having seal of defendant as well as signature dated 1.3.2021. So far as necessary charges/fees is concern plaintiff also filed the copy of the fee receipt below Exh. 21 which shows that the plaintiff has deposited the requisite fee.

19] On perusal of cross-examination of plaintiff it appears that there is not a single suggestion which suggest that the defendant authority intimate in writing to the plaintiff about refusal or sanction

19/11/2021



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or pointed out any objection. On record defendant not filed any single evidence which suggest that the Municipal corporation pointed out any objections or otherwise.

20] Thus, it can be safely said that the plaintiff applied for sanction but, the defendant fails to intimate in writing about sanction or refusal. Therefore, regulation 2.6.2 came into picture which says that 'if within the 60 days of receipt of the notice, alongwith necessary permission fee under the regulation, the authority fails to intimate in writing to the person, who has given the notice of its refusal or sanction or sanction with such modification or direction, the notice with its plan and statement shall be deemed tot have been sanctioned.'

21] In the case at my hand the Akola Municipal Corporation not communicated within 60 days refusal or sanction. On perusal of Exh. 22 it appears that the plaintiff specifically informed to the defendant about the deem permission under the UDCPR. The said letter having the stamp and signature of the official which is itself sufficient to hold that the letter is received by the defendant. It is also important to note that on 16.09.2021 the plaintiff also issued the notice under section 487 of MMC Act but, the defendant keep mum. Therefore, in terms of rules and regulations under UDCPR there is deem sanction. It is also important to note that upon receipt of intimate for deem permission the authority shall within 15 days communicates its remark failing which the proposal shall be


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approved and commencement certificate alongwith one set of duly approved plan for the propose development shall be issued to the applicant within 15 days thereafter.

22] In the case at my hand the concern office not communicate any remark to the plaintiff or issue commencement certificate alongwith approved plan. The defendant though got ample opportunities not examined any of the concern officer. Therefore, the evidence put forth by the plaintiff remain unshaken. There is absolutely no evidence on record to disbelieve testimony of the plaintiff thus, in such circumstances I am of the view that the plaintiff is entitle for the declaration as sought alongwith the injunction.

23] Before concluding the discussion it is desirable on my part to mention the objection raised by the defendant regarding the prayer clause 2 of the plaintiff wherein the plaintiff asked temporary mandatory injunction. The defendant at length argued that the plaintiff relief cannot be granted as he is asked the relief of temporary nature therefore, at the fag end of the trial when the suit is going to disposed off the relief in the nature of temporary cannot be granted.

24] I have heard both the side at length. The advocate for the plaintiff filed pursis below |Exh. 34 wherein he specifically submits

 19/11/20



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that the relief at clause no. 2 be treated as permanent mandatory injunction. It is also important to note that at issue no. 4 the issuing regarding the mandatory injunction is framed and not about the temporary mandatory injunction. Here, the title of the suit is also play important role. The suit title as 'Suit for Mandatory Injunction'. Thus, the using of word temporary is only a technical error which is already rectified by plaintiff by filing pursis below Exh. 34 Thus, I found no substance in the argument that mandatory injunction cannot be granted. More specifically when statued itself place obligation on the part of Municipal authority.

25] Thus, to sum up all the discussion I come to the conclusion that the plaintiff received deem permission for construction of building and therefore he is entitled for commencement certificate subject to the restriction mentioned in the proviso clause of regulation no. 2.6.2. Thus, I answered issue nos. 1 to 6 accordingly and passed the following order.

ORDER

1. The suit is decreed with cost.
2. It is hereby declared that the plaintiff had received deem permission for the construction of building as per the clause 2.6.2 of UDCPR in respect of application for building sanction, permission submitted with defendant on 1.3.2021 alongwith building plan.


19/11/20

3. The defendant is directed by way of mandatory injunction to issue commencement certificate and building sanction plan in view of clause 2.6.2 UDCPR rules in respect of building sanction plan of plaintiff submitted on 1.3.2021.

4. Decree be drawn accordingly.

Date : 19.11.2022

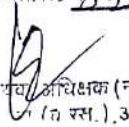

(N. S. Puri)
5th Jt. Civil Judge S.D.,
Akola.

Compd h B

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Asstt. Supdt.
C. J. (S.D.), AKOLA

- १) नकल करीता अर्ज केल्याची तारीख 22/11/22 } बाविश नोव्हेंबर
२) अर्ज पूर्ण झाल्याची तारीख 02/12/22 } दोन डिसेंबर
३) अर्जद्वारास नकल घेऊन जाण्यास दिलेली शेवटची तारीख 02/12/22 } दोन डिसेंबर
४) नकल देण्याकरीता तयार असल्याची तारीख 02/12/22 } दोन डिसेंबर
५) अर्जाद्वारास नकल दिल्याची तारीख 02/12/22 } बाविश


महाराष्ट्र अधीक्षक (न्यायिक)
(न.स.), अकोला

Dt. 02/12/22