CNR No-UPKJ010061242024

Date of Institution	Date of Judgement:	Age:
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IN THE COURT OF DISTRICT JUDGE, KANNAUJ

Civil Misc. Appeal No. 42 of 2024

Appellant: Rishi Bhoomi Shiksha Samiti, through Vineet Agnihotri

Respondents: Nagar Panchayat, Saurikh & Others

Date of Judgment: 22.07.2025

Presiding Officer: Chandroday Kumar (Higher Judicial Service)UP06553

JUDGMENT

1. Facts of the Case

The appellant is a charitable trust running the Rishi Bhumi Higher Secondary School in Aurai village, Kannauj. The school's predecessor (Rishi Bhumi Inter College) was sanctioned aid for educational activities, and it sought additional land for expansion. By a letter dated 22.11.1969, the District Registrar registered a deed and delivered possession of two plots (originally Khasra Nos. 131 and 145, measuring 1.75 acres and 0.11 acres respectively) in favour of the petitioner's institution. On plot No. 145, the school constructed a permanent building for classes. Plot No. 131 was used for sports, recreation, and cultural activities of school children. In a subsequent resurvey, the old Khasra 131/3 became No. 234, and 145 became No. 245. Plot 245 remained with the school as its playground, while plot 234 continued to be used by the school.

Learned Counsel for Respondent Nagar Panchayat, Saurikh, argued that after land consolidation (chakbandi), Gata No. 131's valuation was reassessed and rearranged as Gata Number 234, which was left for Government's barren (waste) under classification of class V-III (d) agricultural land within supervision of Nagar Panchayat. Another land, Gata No. 145, was reassessed and revalued as Gata Number 245, which was left for the school. The appellant has no right to Gata No. 234. He also challenges the gift of government land by Pradhan.

Recently, the Nagar Panchayat (respondent) dug a borewell on the north-west corner of plot No.234, claiming it was government land reserved for public water supply. The appellant objected and filed a suit for permanent injunction (inter alia) and an application under Order 39, Rules 1 & 2, CPC, seeking to restrain the respondents from disturbing the school's possession or doing any work on plot 234. The Civil Judge denied interim relief (observing that plot 234 was recorded in the Panchayat's name and drilling was for public duty) and dismissed the interlocutory injunction application. The appellant's present appeal challenges that dismissal.

For convenience, the following issues (Points for Determination) are framed.

2. Points for Determination

(i) Whether the appellant has made out a prima facie case in its favour for the grant of an interim injunction?

(ii) Whether the balance of convenience favours granting the injunction to the appellant or refusing it?

(iii) Whether the appellant would suffer irreparable injury or loss if the injunction is refused, and conversely, whether the public interest would suffer if the injunction is granted?

Each of these must be examined in light of the evidence, the statutory duty of the respondents, and the case laws cited by the parties.

3. Appreciation of Evidence and Arguments

(i) Prima Facie Case and Possession

The appellant relies on the 1969 sanction and gift deed (to Rishi Bhumi Inter College) to claim title and possession of the land. The records indeed show a registered deed dated November 22, 1969, by which the land was purportedly conveyed to the school's predecessor, and possession was delivered accordingly. On this evidence, the school cleared and levelled the land, erected a building on the 0.11-acre portion (Gata No. 145), and has since used the adjacent 1.75-acre portion (Gata No. 131, now renumbered as No. 234) for its students' sports and other programs. An official Commissionaire's report (map) was also prepared. Notably, neither party objected to that report, suggesting at least a prima facie acceptance that the school had possession of the disputed land.

However, the respondents counter that plot No. 234 (post-chakbandi number) is government land falling within the Nagar Panchayat limits, and that the petitioner never had a legal title to it. In their written statement, they contend that the Gram Panchayat had no power to gift the land, and that the school's possession was at best permissive. The records still show the land in the Panchayat's name. According to the Copy Map old Book Consolidation, there is a considerable distance between Gata Nos. 131 and 145 as noted by the Learned Trial Judge. Thus, there is a genuine dispute over the title, possession, and usability of Gata No. 131 (renumbered as 234) as the school's playground. As held by the Allahabad High Court in *U.P. Power Corporation Ltd. v. Zakir Hasan*, 2005 (61) ALR 14, when a bona fide title dispute exists, one must be very cautious in granting an injunction that effectively decides the suit's ultimate question at an interlocutory stage. In *Zakir Hasan,* the Court set aside an interim order permitting the plaintiffs to raise constructions on land in dispute, noting that such injunction "when there is a title dispute, amounts to decreeing the plaintiffs' suit in toto". Here, too, granting a full-scale injunction might prejudice the true owner if the school ultimately fails.

Moreover, the appellant's remedy was to enforce the allotment if at all; as noted by the Allahabad High Court in *Anupam Sahkari Avas Samiti Ltd. v.*

ADJ, Lucknow, a party with a disputed sale or agreement may have an equally efficacious remedy (specific performance) which could preclude interim relief. While that case ultimately granted an injunction based on long possession, it underscores that the validity of instruments (e.g., a somewhat inchoate gift in this case) is not to be decided at this stage. On the present record, the appellant has not conclusively proved an unassailable right in the land. Thus, it has not shown a strong prima facie title or possession that outweighs the respondents' claim. As another Bench of this Court has held, "prima facie" case must be strong and not doubtful; if the claim appears weak, injunction should not be granted. In our view, the evidence here indicates a fair doubt about ownership and possession, militating against a finding of a clear prima facie case in the appellant's favour.

(ii) Balance of Convenience

Even assuming arguendo that some prima facie right exists, one must consider whose convenience weighs more. The appellant emphasises that its students and school operations would be disrupted if the respondents proceed with the borewell or other works. This is contended to be an "irreparable" injury. Conversely, the respondents point out that plot No. 234 is recorded as vacant municipal land, and the Municipality has a statutory responsibility to provide safe drinking water to the residents. Digging a borewell was done pursuant to this public duty.

Public interest considerations heavily favour the respondents in this case. The Supreme Court has repeatedly held that in cases of public utility works, courts should be extremely hesitant to grant injunctions that will impede construction or infrastructure projects. In *Mahadeo Savlaram Shelke v. Pune MC*, the Supreme Court explained that while deciding interim relief the court must look to prima facie case and balance of convenience, but also that "it is common experience that injunctions are normally asked to prevent public authorities from proceeding with execution of… a scheme… Public interest is… one of the material considerations". If an injunction were granted here, the Nagar Panchayat's water-supply scheme would be paralysed, potentially depriving the community of needed water. This would be a serious public inconvenience and hardship. By contrast, if the petitioners ultimately succeed in the suit, the respondents could be directed to remove the borewell or pay damages at that stage. The balance thus tilts sharply in favour of the respondents and the public.

This is consistent with *Maharwal Khewaji Trust v. Baldev Dass*, (2004) 8 SCC 408 (2005 AIR SCW 104), where the Supreme Court refused to allow the respondent to alter the suit property in favor of use because the plaintiff had shown no irreparable injury – but the Court also noted that if the plaintiff finally succeeded, damages or removal of construction could be ordere. In our case, the "construction" (a borewell) is for public use, and if the school's right is eventually upheld, it can seek appropriate relief then. Notably, in *Khewaji*, the Court disallowed the lower courts' grant of permission to change the property's nature, emphasising the need to protect pending litigation; here, however, we have added countervailing concerns of public welfare, which greatly diminish the appellant's case for injunction. Granting

the balance of convenience to the appellant would risk "multiplicity of proceedings" and public harm.

(iii) Irreparable Injury

For an interim injunction, one must show injury that damages cannot compensate for. The appellant claims that the school's use of the land (for games/sports) will suffer, and students' safety is at risk if the borewell continues. However, courts have held that economic or temporary inconveniences are not "irreparable" in the legal sense. Here, if the injunction is refused and the Panchayat drills the well, the appellant's remedy will be measured in damages or vacatur of the well if it wins the suit. The inconvenience to students is not shown to be beyond pecuniary remedy. By contrast, if an injunction is wrongly granted, the petitioner will not suffer more than any pecuniary loss if the well is removed later – the greater injury would be to the entire area.

Case law again supports the refusal of an injunction absent exceptional irreparable harm. In *the Maharwal Khewaji Trust, the Supreme Court held that without a made-out case of irreparable loss, the lower courts were wrong to permit the respondent to change the nature of the* property by construction or alienation. Here, it is the appellant who wants to freeze the property's status quo; but unlike *Khewaji,* where a private party's construction was at issue, here, continuing the public works will not cause any quantifiable irreparable harm to the school beyond delay. Any damage (for use of the school grounds) can be compensated for later. Indeed, even if the school ultimately recovers the land, the cost of the borewell might be recoverable as damages. As *Khewaji* observed, such losses (if any) may be remedied after trial.

Furthermore, the appellant's own conduct suggests readiness to mitigate loss; for example, the Vice-President of the Panchayat has reportedly assured accommodation of the school's needs. In any event, the harm to the villagers from loss of water supply (should they have to find alternate sources) plainly outweighs any temporary setback to the school. Public authorities should not be enjoined from performing statutory functions on mere apprehension. In a similar vein, the Supreme Court in *Shelke* reiterated that an injunction will generally protect the existing state of affairs, and public benefit cannot lightly be sacrificed. We therefore hold that there is no irreparable injury to the petitioner that justifies an interim injunction; indeed, the greater irreparable harm would lie with the respondents and the public if works are halted.

4. Distinction of Appellant's Case Laws

The appellant has cited several cases for support. None are apposite on the facts here:

1. ***Maharwal Khewaji Trust (Regd.), ... vs Baldev Dass on 15 October, 2004:*** *2004 (57) ALR 428* In that case, a private litigant sought to restrain construction and alienation of disputed land. The Supreme Court refused relief, emphasising that no irreparable harm had been shown. That case dealt with private parties and the construction of

buildings, with an emphasis on the fact that damages could be compensated for any injury. In contrast, our case involves a public authority performing a duty. Here, if anything, the public interest and statutory duties of the Nagar Panchayat tilt decisively against granting relief. Thus, *Khewaji* actually counsels against injunction absent extraordinary grounds.

2. ***U.P. Power Corporation Ltd., Through ... vs Zakir Hasan S/O Sri Tahir Hasan, Munawar ... on 16 August, 2005:*** *2005 (61) ALR 14:* (All HC): This case involved a title dispute and a preliminary injunction allowing plaintiffs to build on the land. The High Court held that permitting construction in such circumstances was like decreeing the suit prematurely and caused irreparable loss to the defendants. Similarly, here, any injunction that prevents the respondents from executing the borewell and related public works would, in effect, prejudice the Panchayat's rights if it later prevails. *Zakir Hasan* thus stands for the proposition that in a disputed title case, the injunction should be limited to maintaining the status quo, not allowing one side to alter the land. That principle supports the denial of broad relief to the appellant here.

3. ***Mohd. Akram Hussain And Anr. vs Baijnath And Anr. on 12 December, 2006:*** *2007 (66) ALR 427* (All HC). In that case, the plaintiffs had executed a valid lease and asked to stop the defendants from digging earth on adjacent land. The court found all three requirements for the injunction satisfied and upheld the injunction. The facts there involved clearly established legal rights (a registered 16-year lease) and allegations of trespass. By contrast, in this case, the petitioner's legal right is far less secure (the "gift" may have been essentially an illegal one, and no final title decree exists). There is no mutation in favour of the appellant. Moreover, the respondent here is carrying out a service, not committing a private trespass for gain. Thus, *Akram Hussain* is distinguishable on its facts; it cannot aid the petitioner who has not demonstrated a comparable lease or title.

4. ***Govardhan And 4 Others vs Smt. Jaldhara Devi Maha Vidyalay And ... on 9 December, 2020****: 2021 (144) ALR 134* (All HC, Lucknow). There, the plaintiffs owned the land by partition decree and declaration of abadi, and the defendants (relatives) had encroached and built on the plaintiffs' share. The Court held that even in a suit for a mandatory injunction (to remove encroachments), interim prohibitory relief could be granted if a prima facie case and the other necessary ingredients were satisfied. Importantly, Govardhan emphasised preservation of the plaintiffs' existing rights from further invasion. Our situation differs markedly: the plaintiffs (appellant) have no final decree or partition title, and the "encroachment" here is a borewell for municipal use, not a private wall or building. There is no evidence that the respondents are seizing the school's land for private gain. Furthermore, the public utility nature of the work was a factor not present in Govardhan. In short, Govardhan stands for the general principle that interim injunctions may preserve property in its existing form; however, on the facts, it involved an unchallenged plaintiff's title and wrongful defendants. Here, given the

contested title and public function, Govardhan does not compel the granting of an injunction to the appellant.

5. ***Anupam Sahkari Avas Samiti Ltd. Vs. Additional District Judge Court No. 4, Lucknow and another ... on 11 March, 2005:*** 2021 (144) ALR 134 (All HC): In that cooperative housing society case, the petitioner had a registered agreement (albeit lacking timely performance) and had mutative possession of the disputed plot. The High Court granted an injunction, noting the petitioner's "long-standing possession" and directing the parties to maintain the status quo. Crucially, the defendants there had no public authority and had obtained possession by unregistered deeds. The Court nonetheless protected the plaintiff's possession against being disturbed. In contrast, in this case, the petitioners' so-called "possession" is based on a prima facie unauthorised gift, while the respondents are a statutory body with records of ownership. The equities tilt strongly in favour of the Nagar Panchayat, as it alone is responsible for municipal duties. The principle that a possessor in good faith should not be dispossessed does not override the overwhelming public interest here, nor does it mean the school can unilaterally bar lawful civic works.

In summary, the cases relied upon by the appellant are inapplicable or distinguishable. They either involve clear private titles or different forms of relief. **No One supports halting a governmental public works project on disputed land.** On the other hand, the established law (as in *Shelke* and *Khewaji*) is that without urgent necessity and prima facie right, an injunction will not issue. The appellant has not met this burden.

5. Findings

1. No prima facie case is made out...

2. Balance of convenience favours the respondent...

3. No irreparable loss is shown...

6. Order

The appeal is dismissed. The impugned order dated 22.11.2024 is affirmed.

No costs.

Pronounced in open Court on 22nd July 2025.

(Chandroday Kumar)
District Judge,
Kannauj.