

ORDER BELOW EXH.5(Passed on 20th December, 2025)

The plaintiff has prayed for temporary injunction restraining the defendants from proceeding further with the matter filed under Section 5 of Mamlatdar Court's Act, 1906 (for short 'the Act') bearing No.MCA 5/Lohari Bd./2021-22 by defendant No.4 and also restraining him from creating any new road from the property belonging to the plaintiff under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure (for short 'CPC').

02. The suit is filed assailing the order passed by Tahasildar in above mentioned matter dated 30.11.2024 by which the Tahasildar allowed application filed by defendant No.4 for amendment. It is claimed that, by way of said amendment, the entire nature of proceeding was changed. The Tahasildar should not have allowed the said amendment application. Due to the said order of Tahasildar, the existence and non-existence of road claimed from the property belonging to the plaintiff was completely changed. It is also contended that, defendant No.4 intentionally amended the proceeding after the concerned officer of Tahasildar made spot inspection and mentioned that, the road claimed by defendant No.4 is not in existence. It is also stated that, due to the said order of Tahasildar, the plaintiff's rights are being substantially prejudiced. Hence, by way of suit the order of Tahasildar dated 30.11.2024 is prayed to be declared as null and void. Besides it, the relief of perpetual injunction restraining

defendant No.4 from claiming any right of way from the property belonging to the plaintiff is prayed for.

03. Defendants No.1 to 3 opposed the application by reply (Exh.43). They denied the contentions raised in the application in *toto*. According to them, Tahasildar never committed any mistake in passing the order in question. He correctly allowed the application for amendment filed by defendant No.4. It is further contended that, the suit is not maintainable since the plaintiff has alternative remedy of revision under Section 23 (2) of the Act. Hence, the suit and application are prayed to be dismissed and rejected.

04. Defendant No.4 opposed the application vide reply (Exh.52). He denied all the contentions raised in the application. According to him, the suit is false one. He has applied for amendment in the said proceeding before Tahasildar only to correct a mistake committed inadvertently. The matter is yet not decided. Thus, the suit is not maintainable for the relief claimed. It is further submitted that, the plaintiff has already filed another Civil Suit bearing Registration No.159/2023 against the present defendant before the Civil Judge Jr. Dn., Akot. He has also filed application for temporary injunction in the said suit for the similar relief which is claimed in the present suit. His said application for temporary injunction in the said suit is rejected by Civil Judge Jr. Dn., Akot. Thus, the present suit and application is filed only to prolong the proceeding pending the Court of Tahasildar under Section 5 of the Act. He suppressed the important facts from the

Court. Rejection of application would not cause any prejudice to the plaintiff. *Per-contra*, if the injunction as prayed is granted, defendant No.4 would suffer irreparable loss. Hence, it is prayed that, the plaintiff failed to raise prima-facie case. Balance of convenience does not lie in his favour and therefore, he is not entitled for the relief of temporary injunction.

05. Defendant No.5 also opposed the application by reply (Exh.53). He also denied the entire contentions raised in the plaint in *toto*. He specifically submitted that, the suit and application are based upon false facts. The plaintiff has no cause of action to file the present suit. It is also stated that, the plaintiff already filed Reg.C.S. No.159/2023 against defendant No.4 claiming similar relief. The temporary injunction prayed in the said suit is rejected by Civil Judge Jr. Dn., Akot in the said suit. Thus, it is submitted that, the present application of plaintiff deserves to be rejected.

06. The points for determination along with my findings thereon are as under :-

Sr.	Points	Findings
1)	Whether the plaintiff has made out a <i>prima-facie</i> case ?	.. No.
2)	Whether the balance of convenience lies in his favour ?	.. No.
3)	Whether the rejection of petition would result in irreparable loss to the rights of the plaintiff ?	.. No.

4) What order ?

..The
application is
rejected.

REASONS

AS TO POINT NOS. 1 TO 3 :-

07. I had an opportunity to hear the Learned Advocate Shri S.S. Khawale, for the plaintiff, the Learned A.G.P., for defendants nos. 1 to 3, the Learned Advocate Shri G.P. Guhe for defendant No.4 and Learned Advocate Shri S.P. Kulkarni for defendant No.5.

08. The Learned Advocate for plaintiff relied upon the judgment of Hon'ble Bombay High Court in Second Appeal No.386/2003 dated 03.03.2017 ***Mohammad Khan Vrs. Shankar Dhage***. The Hon'bel High Court observed that, it can be seen from the provisions of the Act that, it presupposes and recognizes existence and continuation of power and jurisdiction of Civil Court. The scheme provides for a summary jurisdiction and powers and a bar of suit to make orders of Mamlatdar or Collector etc., to be immune from scrutiny in a Civil Suit. It is seen that, there is no express bar of suit.

09. The other judgments relied upon by the Advocate for the plaintiff are similar to the judgment of Mohammad

Khan (supra). I therefore, do not find it necessary to discuss them at length. The legal position of law is clear that, there cannot be any express bar to file a suit against the order passed by Tahasildar in the above mentioned proceeding i.e. amendment of proceeding.

10. Per-contra, the Learned Advocate Shri Ghue for defendant No.4 relied upon ***Sarjerao Shete Vrs. Surendra Kaur W.P. No.193 of 2022 decided on 07.07.2022.*** The Hon'ble High Court directed in the said matter that, the Mamlatdar shall allow the plaintiff to carry out the amendment in the plaint with further direction to the plaintiff that, he shall furnish the amended copy of plaint for the other side. On the basis of this judgment, the Learned Advocate Shri Ghue sought to propagate that, the order passed by Mamlatdar by which the amendment of plaint is allowed is not illegal. Per-contra, such course is permissible. Hence, the objection raised by the plaintiff that, the Mamlatdar Court had no jurisdiction to order any amendment in the suit filed under Section 5 of the Act, is not at all considerable.

11. The Learned Advocate Shri Ghue further relied upon ***Dinkar Vrs. State of Maharashtra, W.P. No.7727 of 2020*** in which the Hon'ble High Court observed that, since the provisions of the Act sufficiently provide for remedy of challenge to the said order by way of revision and as the

rights of the party are not decided conclusively and the powers of Mamlatdar are summary in nature in order to meet the urgent situation, the legislation in its wisdom has barred remedy of appeal against such order and limited remedy is provided in order to insure that, there is no miscarriage of justice. Since the remedy of revision has been provided, entertainment of writ petition obviously would be to the extent of considering the perversity of the findings and it is not expected that re-appreciation of facts should be done by the Hon'ble High Court. Needless to say that, such orders would be challenged by preferring writ petition under Article 226 and 227 of the Constitution of India and not by filing suit before a Civil Court, unless it is claimed that the order passed is nullity.

12. In the matter in hand, the plaintiff has challenged the order of Tahasildar claiming it as nullity. According to him, the said order caused substantial prejudice to his rights. Still the fact remains that, this Court, in my opinion cannot sit as an Appellate Authority against any interlocutory order passed by Mamlatdar Court. Such interpretation is not at all permissible. Even otherwise, if the contention of plaintiff is accepted to be correct and even if it is held that, the order passed by Tahasildar is nullity, it has to be seen that, the defendant No.4 contended that, the said amendment was for the purpose of correcting technical mistake.

13. Per-contra, according to the plaintiff, the said amendment was of such nature that, the entire nature of proceeding is being changed causing substantial damage to the rights of plaintiff. This controversy in my opinion cannot be adjudicated in this Forum since alternate remedy is available to the plaintiff and according to his Advocate, he has already availed the said remedy.

14. As far as prima-facie case, balance of convenience and irreparable loss is concerned, the Learned Advocate for defendant No.4 correctly relied upon the correct roznama of the said proceeding pending before Tahasildar. The entire roznama clearly reflects that, the said matter is being attended by the plaintiff and defendant No.4 on almost every date. There is nothing on record to infer that, while passing the order in question, there was gross violation of the principles of natural justice. Merely because by way of amendment, the existence and non-existence of right of way is completely changed, this Court cannot adjudicate that, the order passed by Tahasildar is perverse and this Court cannot set such orders aside as a Appellate Court of Tahasildar.

15. If remedy is available and the law says that, it should be availed in particular manner, it should be availed in that manner alone. No departure is permitted. Another

important aspect is that, the Civil Judge Jr. Dn., Akot in R.C.S. No.159/2023 decided the temporary injunction application dated 05.01.2024. On perusal of said order, it becomes clear that, the present plaintiff was plaintiff in the said suit and he claimed relief against the present defendant No.4. Once this Court already observed that, there is no *prima-facie* case, balance of convenience and irreparable loss exist in favour of plaintiff in respect of the similar relief, the said observations cannot be over turned merely because in the present suit certain parties are different.

16. Considering the above mentioned, over all circumstance, in my opinion the plaintiff fails to establish the three basic component for grant of temporary injunction. I, therefore, answer Points No.1 to 3 in the Negative and in answer to Point No.4, passed the following order.

ORDER

1. The application Exh.5 is rejected.
2. Costs in main cause.

Date: 20.12.2025.

(Shivnath M. Kale)
Civil Judge Senior Division,
Akot.