



RCS No. 191/2025  
Janki Milind Vs.  
Sarpanch, Sawargaon  
MHAK060036932025

**ORDER**  
**(Below Exh.5)**  
**(Passed on 23<sup>rd</sup> March, 2026)**

This is an application by plaintiff under Order XXXIX Rule 1 and 2 of The Code of Civil Procedure, 1908 (*for short 'The Code 1908'*) to temporarily restrain the defendants or anybody else on their behalf from disturbing her peaceful possession over the suit land till final disposal of the suit.

2. It is submitted on behalf of plaintiff that she is in peaceful possession of agricultural field block No. 10 having Old Survey No. 3/3, ad-measuring 4 Hector 38 Are situated within the limits of village Khaparwadi Budruk, Tq. Akot, Dist. Akola (*hereinafter mentioned as 'suit land'*). By virtue of Order passed in revenue case bearing Class No. LND-12 Khaparwadi, Bu. Case No. 6 of 1980-81 dated 21/08/1982, defendant No. 1 and 2 passed a resolution No. 7 on 27/12/2023 in the village panchayat and on the basis of said resolution, defendant No. 1 and 2 requested Tehsildar, Akot, by sending letter dated 10/01/2024 to effect mutation entry in the record of suit land. On the basis of letter dated 10/01/2024, Tehsildar, Akot called report

from the Circle Officer of Asegaon and Talathi of Khaparwadi Budruk. The Circle Officer and Talathi submitted report to the Tehsildar dated 23/01/2024 stating that there is entry in the Other Right's Column of suit land that 0 Hector 5 Are land out of the suit property is reserved for village crematorium.

3. It is further submitted that on 13/02/2024, defendant No. 1 again wrote letter to Tehsildar, Akot that as per the Order passed in Class No. LND-12 Khaparwadi, Bu. Case No. 6 of 1980-81 dated 21/08/1982, 0 Hector 20 Are land has been reserved for the village crematorium and the plaintiff and her husband has not vacant the possession thereof till the date. Therefore, Tehsildar vide letter dated 11/03/2024 asked to Talathi, Khaparwadi to take entry of 20 Are land on the basis of Order dated 21/08/1982.

4. The plaintiff, therefore, applied to the Talathi that the Order dated 21/08/1982 has been cancelled and no entry should be taken of village crematorium as ordered by Tehsildar in the suit land. The Talathi by doing necessary verification submitted his report dated 18/03/2024 to the Tehsildar with the notification of the Government by which the Order dated 21/08/1982 was cancelled. Therefore, the Tehsildar disposed of the application dated 13.02.2024 of

defendant No. 1 filed for taking entry of 0 Hector 20 Are land in the record of right of the suit property.

5. Thereafter, the defendants allegedly passed Resolution dated 28/06/2024 and decided to acquire 0 Hector 5 Are land out of the suit field. On the basis of said resolution the defendants again applied to the revenue officials to that 0 Hector 5 Are land out of the suit property is reserved for village crematorium and plaintiff is wrongfully in possession thereof. Therefore, she be directed to pay compensation to defendant panchayat.

6. It is submitted by the plaintiff that there is no base to the entry of 0 Hector 5 Are taken in the record of rights of the suit field. Despite, Tehsildar Akot, passed Order dated 12/01/2025 restraining plaintiffs from causing obstruction to the villagers to use said 5 Are land out of the suit field as a crematorium without following due procedure of law. Therefore, the plaintiff challenged said order dated 12/01/2025 of the Tehsildar, but the Sub-Divisional Officer, Akot dismissed the appeal by Order dated 16/07/2025 and upheld the Order of Tehsildar dated 12/01/2025.

7. On the basis of Order dated 16/07/2025, the defendants on 03/08/2025 tried to cause obstruction to the possession of the plaintiff over the suit field. Therefore, the

plaintiff has filed present suit after giving necessary notice to the defendants. However, the suit is at sprouting stage, will take its own time to reach logical end. Hence, this application is filed.

8. Per contra, defendant No. 1 and 2 filed their say at Exh. 29. Defendant No. 3 adopted the say of defendant No. 1 and 2 by filing *Pursis* (Exh.30).

9. It is contended by defendants that the entry of 0 Hector 5 Are land in the record of rights of the suit field is since many years. As per Section 157 of Maharashtra Land Revenue Code 1966, said entry is presumed to be correct. Said entry is not yet repealed nor the plaintiff has applied for such repeal before any appropriate authority till the date. So also the plaintiff has not challenged the resolution dated 28/06/2024 before any appropriate forum. The plaintiff has filed suit for simplicitor injunction without any consequential relief. Therefore, the suit is liable to be dismissed at the very threshold.

10. It is further contended that the defendants and the villagers are using the 0 Hector 5 Are land of the suit field as a crematorium since their forefathers. The application of the defendants is allowed by the Tehsildar by which the plaintiff is restrained from causing obstruction to

the use of the said 5 Are land as a crematorium by the villagers. The Order of the Tehsildar is confirmed.

11. It is further contended that though, Order 21/08/1982 is cancelled by notification dated 20/09/1982, still, there is no order for cancellation of subsequent acquisition of 5 Are land out of the suit field. There is no other place is available to the villagers in the village to use as a crematorium. The defendant No. 1 and 2 are following the Order of the SDO dated 16/07/2025. Hence, the suit is baseless. The plaintiff has no right to seek relief as prayed. Hence, it is prayed that the application be rejected.

12. Heard both the sides at length. Perused the application, Say and documents on record. Considered the submissions. Following points arise to determine the application. I record my findings for each point with the reasons discussed herein below ;

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1)	Whether the plaintiff has prima-facie case?	...Yes...
2)	Whether balance of convenience tilts in favour of the plaintiff ?	...Yes...
3)	Whether plaintiff will suffer irreparable loss if injunction is refused?	...Yes...

4)	What order?	Application is allowed.
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### REASONS

#### **As to Point No. 1 :**

13. At the outset, it is worth to note that the order dated 21/08/1982 passed by Acquisition Officer to acquire 0 Hector 20 Are land out of the suit field has been admittedly cancelled by virtue of Notification bearing No. LAQ-47-Khaparwadi-3-81-82 dated 20/09/1982. Therefore, it is absolutely clear, no acquisition can be made by the defendants at all on the basis of Order dated 21/08/1982. However, it is alleged by the plaintiff that subsequent to the notification of cancellation dated 20/09/1982, the defendants passed a resolution in the village Panchayat on 28/06/2024 and filed an application before Tehsildar, Akot stating that the plaintiff is in wrongful possession of the land allotted to the village crematorium from the year 1977-1982 to 2024 and prayed to order the plaintiff to pay compensation to the panchayat. In the resolution, the defendants also get 0 Hector 5 Are land reserved out of the suit field.

14. It appears that the Tehsildar, Akot, by relying upon the resolution of the Panchayat dated 28/06/2024 and spot verification reports of revenue officials, passed an order dated 12/01/2025 restraining plaintiff from causing

obstruction to the use of said 5 Are land as village crematorium which has been confirmed by Sub-Divisional Officer by Order dated 16/07/2025.

15. At this juncture, it is worth to note that it is not made clear by the defendants in what capacity and under which provisions, they were entitled to acquire 0 Hector 5 Are land out of the suit field for village crematorium by the Tehsildar.

16. For the sake of argument, even if it is held that the village Panchayat had right to acquire the 5 Are land of the plaintiff by virtue of resolution dated 28/06/2024, still, the defendants have not filed such resolution dated 28/06/2024 on record or any other order of the competent authority authorizing lawful reservation of 5 Are land out of the suit field.

17. It is significant to note that the Order of Tehsildar dated 12.01.2025 is confirmed by Sub-Divisional Officer vide his order dated 16.07.2025 by holding that the entry in the Record of Rights of crematorium is old one and plaintiff failed to adduce evidence to show as to how that entry is wrong one. However, it prima-facie appears that the Sub-Divisional Officer confirmed the Order of the Tehsildar, Akot dated 12.01.2025, by holding that the disputed land

was being used for crematorium and there is no land available in the village for the crematorium. However, the suit land is admittedly private property of the plaintiff. Moreover, Spot Inspection Report dated 12.01.2024 of the Circle Officer prima-facie reveals that no part of the suit land is being used for cremation and whole land is being cultivated by plaintiff. Even otherwise, merely because suit land was allegedly being used by the villagers for cremation since long, it does not mean, the defendants are entitled to do so in future also in absence of a substantive document in their favour.

18. Admittedly, there is an entry in 7/12 Extract of suit land that 5 Are land is left for cremation. The mutation entries carries presumptive values, however, it is rebuttable one since Section 157 of the MLRC Code, 1966 states that entry in the register of mutations shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor.

19. Besides, though Section 158 of the MLRC Code, 1966, provides that no suit shall lie against the State Government or any Officer of the State Government in respect of a claim to have an entry made in any record or register that is maintained under Chapter X of the Code, 1966, still, the defendants are admittedly not Government

nor Government Officers. Rather here in this case, the entry is already made and its legality is in question. Therefore, Section 158 of the MLRC Code, 1966 does not create bar to entertain the suit.

20. Though, the defendants have contended that the villagers are continuously using the said 5 Are land as a crematorium, still, possession of the plaintiff over said 5 Are land is not denied by the defendants.

21. In such circumstances, as per the ratio of judgment passed by Hon'ble Apex Court in the case of **Anathula Sudhakar Reddy Vs. P. Bucchi Reddy, AIR 2008 SC 2033**, there being no cloud upon the title of the plaintiff over the said 5 Are land, the suit for simplicitor injunction is maintainable. Hence, I find that the plaintiff has arguable case. In such circumstances, if the defendants permitted to execute the order of the Sub-Divisional Officer dated 16.07.2025, it will cause serious prejudice to the interest of the plaintiff in the suit field. Considering the authority with the defendants, it cannot be accepted that there is no other land available in the village for cremation. On the contrary the disputed land is cultivated by plaintiff. Therefore, the balance of convenience also tilts in favour of the plaintiff. Hence, in cumulative effect of above all discussion, I answer

Point No. 1 to 3 in the affirmative and in answer to Point No. 4 pass the following order ;

**ORDER**

- 1) The application (Exh. 5) is allowed.
- 2) The defendants or anybody else on their behalf are hereby temporarily restrained under Order XXXIX Rule 1 of Code of Civil Procedure, 1908 from causing disturbance to the peaceful possession of the plaintiff over the suit land (*more particularly mentioned in the 1<sup>st</sup> para of the plaint*) till final disposal of this suit.
- 3) Costs in cause.

Date : 23.03.2026

Place : Akot.

**Sd/-**

(A. A. Mali)

2<sup>nd</sup> Jt Civil Judge (Jr.Dn),  
Akot, Dist. Akola.

**RCS No. 191/2025  
Order/Exh. 5**

**CERTIFICATE**

I affirm that the contents of this PD.F file Order are same word to word as per the original order.

Name of Stenographer	:	P. N. DURATKAR
Court Name	:	2 <sup>nd</sup> Jt Civil Judge (Jr.Dn.) & JMFC, Akot, Tq. Akot, Dist. Akola
Date of decision	:	23/03/2026.
Order Signed by PO on	:	23/03/2026.
Order Uploaded on	:	24/03/2026.