

ORDER BELOW EXH.22[Passed on 3rd July, 2019]

- 1) The defendants have moved this application under Order VII Rule 11(d) of C.P.C.
- 2) It is the contention of defendants that, the plaintiffs have filed present suit seeking the relief of declaration and perpetual injunction. The plaintiffs in the present suit challenged the legality of order passed by Tahasildar in Road Case No.22/2017. It is further contention of said defendants that, considering Section 23 and 26 of Mamlatdar's Court Act, the order passed by Tahsildar under Section 5 cannot be challenged before the Civil Court. The jurisdiction of Civil Court is barred to that extent. Therefore, the present suit is barred by Law and therefore, they prayed to reject the plaint.
- 3) Per contra, the plaintiffs strongly opposed the application on the count that, the Civil Court has ample jurisdiction to try and decide the said suit. As per their contention the order passed by Tahasildar Under Section 5 of Mamlatdar's Court Act is totally illegal. There is no any express bar to entertain said suit. Therefore, he prayed to reject the application.
- 4) Heard both the sides at considerable length. Perused the record. Considering the rival contentions raised from both the sides the question arises that, whether the suit challenging the legality of order passed by Tahasildar Under Section 5 of Mamlatdar's Court Act is maintainable in view of Section 9 of C.P.C. It is necessary to decide whether the jurisdiction of Civil Court is expressly or implied barred to try such type of suit.
- 5) The Ld. Counsel for defendants has invited my attention to Section 23 of Mamlatdar's Court Act and vehemently argued that,

the order passed by Tahasildar under Section 5 can be challenged before Collector by moving revision petition. Moreover, Section 26 specifically bars the jurisdiction of Court to entertain suit challenging said order. I have given due consideration to the submission raised on behalf of defendants. On perusal of Section 26 of said Act it clearly transpires that, there is no any express or implied bar to entertain the suit challenging legality of order passed under Section 5 of said Act. At this juncture, it is necessary to refer ratio laid down by Hon'ble High Court of Bombay bench at Nagpur in the case of ***“Mohammad Khan Vs. Shankar & Ors”***. ***[2017(3) Mh.L.J.135]***. In the said case the Hon'ble High Court has specifically laid down that, “though there is revision provided under Section 23 of said Act to challenge the order passed by Mamlatdar under Section 5, the Act nowhere attaches finality either to the order passed under Section 5 by Mamlatdar on merits or to the order passed in revision under Section 23 of said Act. In the absence of such finality being attached to the order passed under the Act, the jurisdiction of Civil Court cannot be held to be impliedly barred merely because the Act provides a separate machinery for getting the grievance redressed. The ouster of plenary jurisdiction of Civil Court cannot be readily inferred and such jurisdiction remains intact and available to be exercised either against the order under Section 5 or against the order of revision under Section 23 of said Act.”

6) Therefore, considering the ratio laid down by Hon'ble High Court it is now crystal clear that, the jurisdiction of Civil Court is not barred and the legality of order passed under Section 5 of Mamlatdar's Court Act can be challenged by filing suit in the Civil Court. Therefore, considering the said settled principle of Law I found no substance in the submission raised on behalf of defendants

that, this court has no jurisdiction to try the suit and it is barred by any Law. Therefore, the present application is totally devoid of merit and for the said reason I proceed to pass following order.

ORDER

- 1) The application Exh.22 stands rejected.
- 2) No order as to costs.

Sd/-xxx

Shahada.
Date :- 03/07/2019.

(Rahul A. Shinde)
Civil Judge Senior Division,
Shahada, Dist. Nandurbar.