

Order below Exh.19 in R.C.S. No.160/2025
(Ramesh Vs. Vasant & Ors.)

This is an application filed by the plaintiff for grant of status-quo of defendant No.8. He submitted that, he has filed application for temporary injunction. There will be summer vacations for the court. Defendant No.8 may close the road which is subject matter of the suit. There is no order directing defendant No.8 to close the road. In spite of that, he is trying to close it. Therefore, he may be directed to maintain status-quo.

2. Defendant No.2 resisted the application by filing say and contended that, the plaintiff has filed application for temporary injunction against all the defendants. The summons are not served upon all the defendants. Therefore, the application is not tenable. Defendant No.8 is public servant. No order can be passed against him. Therefore, application may be rejected.

3. Defendant No.5 filed say and submitted that, the order passed by Tahsildar is correct. The order of SDO, Niphad is illegal. There is no direction to close the road. The notice sent by defendant No.8 is illegal. Therefore, necessary order may be passed.

4. Heard both sides. Perused record of the case. On perusal of 7/12 extract of block No.137, it can be gathered that, there is reference to the East-West 10 ft. road abutting to the shiv. It seems that, as per the application filed by the plaintiff with Tahsildar under Section 5 of Mamlatdar Court's Act, order was passed on

03.02.2023. The said order was challenged before SDO, Niphad vide Revision No.78/2023. SDO, Niphad canceled the order passed by Tahsildar, Sinnar. Said order was passed on 17.02.2025. On the basis of said order, defendant No.8 issued notice to the plaintiff and other person. The copy of said notice is filed at list Exh.3/11. It shows that, the Circle Officer has issued the notice for closing the road as per the order of SDO, Niphad dated 17.02.2025.

5. Ld. Advocate for defendant No.2 argued that, no suit shall be filed against defendant No.8 as there is a bar under Section 26 of the Mamlatdar Court's Act, 1906. Bare perusal of this Section shows that, there is bar to the suit in respect of any act done or purporting to be done by any government officer in his official capacity, except where acting as a manager or guardian duly constituted under any law for the time being in force. In the case at hand, the perusal of order of SDO, Niphad shows that, order of Tahsildar dated 03.02.2023 has been set aside. Neither party has placed on record the order passed by Tahsildar under Section 5(2) of the Act. There is a reference to the order in the Revision Application No.38/2023 filed before SDO, Niphad (list Exh.3/7). It clearly goes to show that, as per order of Tahsildar the disputed road was ordered to be opened for access for the possessor of land in block No.51/4. The said order is reversed as per the order of SDO, Niphad dated 17.02.2025. SDO, Niphad is a quasi judicial authority. Her order is not challenged before any forum. Admittedly, there is no reference to the closure of road in the order passed by SDO, Niphad. It seems that, on the basis of order passed by SDO, Niphad, Circle Officer is acting to restore the position which was there before passing of order by

Tahsildar. Unless the order passed by SDO is challenged, defendant No.8 cannot be restrained by passing any prohibitory order. In the plaint, order of SDO is not directly challenged. Only declaration is sought that order passed by Tahsildar is legal. Furthermore, defendant No.8 has not filed say on the application Exh.5. In such circumstances, no directions can be given to defendant No.8 to maintain status-quo. Accordingly, the application is rejected.

Date : 08.05.2025.

Sd/-xxx
(R. S. Kanade)
Civil Judge S.D., Sinnar.