

ORDER BELOW EXHIBIT NO. 5
(Passed on this 03rd day of August 2026)

01. Plaintiffs are seeking temporary injunction to restrain defendants No. 1 and 2 from implementing order of defendant No. 1 to create new road from their common bandh of agricultural lands (*in short* ‘**disputed bandh**’) as well as to restrain defendants No. 3 to 8 from obstructing in their peaceful possession of disputed bandh by creating new road therefrom.

02. Plaintiffs have averred that, they are owner in possession of agricultural landed properties in survey No. 424 and 451 situated in the vicinity of town Bhoom whereas defendants No. 3 to 8 are owners in possession of Survey No. 446, 452 & 463 as mentioned in site map attached with plaint and south-north common bandh of survey No. 424 and 451 is in dispute. According to them, though there is no any road from the disputed bandh, but defendants No. 3 to 8 on dated 05.08.2024 approached to defendant No. 2 and sought new road from the disputed bandh which was finally decided by defendant No. 2 by conducting spot inspection and preparing panchnama and rejected said application, but defendant No. 1, when defendants No. 3 to 8 approached to him in revision, without making spot inspection and adopting due procedure, allowed their revision which was also not within limitation and even though there are so many alternative roads to these defendants, but allow new 10 feet road from the disputed bandh and now defendants No. 1 and 2 are trying to implement said order as well as defendants No. 3 to

8 are taking undue advantage of said order are trying to obstruct in their peaceful possession of aforesaid disputed bandh by trying to create new road, thereby, according to them, in case such new road has created from the disputed bandh then they will loose much area and will suffer irreparable loss. According to them, defendants No. 3 to 8 have no right of way from disputed bandh, so cannot create new road therefrom. When defendant No. 2 has rejected application of these defendants, then no reason for defendant No. 1 to grant the same without conducting independent inquiry, so according to them, they have *prima facie* case. As they are owners of disputed bandh, then they have right to use as per their convenience, so balance of convenience in their favour and in case their application is rejected, then defendants will create new road from disputed bandh and they will loose handful area as well as there will be continuous disturbance, so will sustain irreparable loss, hence, requested to allow application as prayed for.

03. Defendants No. 1 and 2 have not responded to suit summons and notice of this application, so application is proceeded against them without their response.

04. Defendants No. 3 to 8 have appeared and presented their written statement cum say to this application vide Exh. 36. According to them, landed properties of plaintiffs and defendant No. 8 are adjacent. From the land of defendant No. 3 in Block No. 463 up to the southern side bandh in Block No. 452 of defendant No. 8 they all have

constructed cart-road, half road constructed in 2007 whereas remaining was constructed in 2011. In year 2007, owner of Block No. 424 was one Mahammad Isak and of Block No. 451 one Shakilbhai who have consented to create road from disputed bandh, thereby, they have constructed road up to land of defendant No. 8. Nearby in year 2009 plaintiff No. 2 purchased area in Block No. 424 and her sons have objected to create road from disputed bandh, thereby, they had to stop construction of said road. Though their lands are fertile and having irrigation facility, but due to having no road, so cannot carry vehicles etc. in their agricultural lands, thereby, could not take crops except traditional one, so are losing much earning every year. Hence, they have approached to defendant No. 2 with application to grant them road from disputed bandh which is later on granted by defendant No. 1 under section 143 of Maharashtra Land Revenue Code, 1966 (*hereinafter referred as 'MLR Code' in short*) and tried to implement the said order. According to them, defendant No. 2 had not visited spot of incident, but inspected from distance by standing on cement road and passed order rejecting their application without adopting due procedure. The same is observed by defendant No. 1 and granted road. According to them, order of defendant No. 2 is not challenged by plaintiffs before appropriate authority, thereby, they have not right to seek any relief as sought in the suit. According to them, though plaintiffs have claimed that, they have alternative roads, but such roads are not in existence there, thereby, since long they are suffering much and losing income due to non existence of road, so they

have claimed that, in case application is allowed then, they will again continue to suffer losing income, but such is not a case of plaintiff who can also take benefit of said road, so requested to reject the application.

05. Considering rival contentions of parties and basic principles of issuance of temporary injunction bear in mind following points arose for consideration against each of them findings is being recorded in subsequent paragraphs:

<u>POINTS</u>			<u>FINDINGS</u>
01.	Whether plaintiffs establish their <i>prima facie</i> case ?	<u>....</u>	<u>In Partly Affirmative.</u>
02.	Whether balance of convenience lies in favour of plaintiffs ?	<u>....</u>	<u>In Partly Affirmative.</u>
03.	Whether irreparable loss will cause to plaintiffs in case application is rejected ?	<u>....</u>	<u>In Partly Affirmative.</u>
04.	What is order ? <u>.....</u>		<u>As per final order application is partly allowed.</u>

06. Heard Ld. Advocate shri, R. V. Mote for plaintiffs and Ld. Advocate shri, V. D. Pawar for defendants

No. 3 to 8.

// REASONS //

07. Plaintiffs are seeking issuance of temporary injunction to restrain defendants No. 1 and 2 from implementing order of defendant No. 1 and from creating any new road from their disputed common bandh of survey No. 424 and 451. According to them, though defendant No. 2 has conducting appropriate inquiry in which spot inspected and finding alternative roads to defendants No. 3 to 8 rejected their application for creating new road from disputed bandh, but in revision defendant No. 1 has set aside said order of defendant No. 2 and granted new road from disputed bandh without conducting proper inquiry. In the said background if legal provisions have seen then, Order 39 Rule 1(c) of Civil Procedure Code, 1908 (*hereinafter referred as 'CPC' in short*) provides that, where in any suit it is proved by affidavit or otherwise that the defendants threatens to dispossess the plaintiff or otherwise cause injury to the plaintiffs in relation to any property in dispute in the suit, the court may by order grant an temporary injunction to restrain such act as the court think fit, until the disposal of the suit, or until the further order. Thus, it is clear that, relief of temporary injunction is an equitable relief used to provide to protect right of plaintiffs from invasion at the hands of defendants. As relief sought comes under the discretionary power of the court, so required for the court to exercise it judiciously. Certainly bearing in mind whether plaintiffs have established *prima facie* case, balance of convenience lies in

their favour and irreparable loss will sustain to them in case application is rejected.

AS TO POINTS NO. 1 TO 4:

08. As these points are interlinked, so to avoid repetition of facts in discussion all have taken collectively.

09. Shri. Mote, Ld. Advocate of plaintiffs, has submitted that, there is no dispute that plaintiffs are owners in possession of agricultural landed properties in survey no. 424 and 451. He has also submitted that, there is no dispute that, from disputed bandh there is no road prior to passing order by defendant No. 1 thereon also defendants No. 3 to 8 have approach to defendant No. 2 with seeking relief to grant new road there from, but defendant No. 2 has found, on spot inspection and conducting proper inquiry, no propriety to grant road, so he rejected application. According to him, defendant No. 1 has not spot inspected, nor prepared any panchnama and had not adopted due procedure and passed order to grant road to defendants No. 3 to 8 on their approaching in revision. He has further submitted that, defendants No. 3 to 8 have not contended any easementary right from disputed bandh, so according to him, defendant No. 1 has no authority to grant new road from disputed bandh. He has submitted that, now defendants are trying to implement said order of defendant No. 1 by making new road from disputed bandh. In case they have succeeded in creating such new road there from, then plaintiffs will loose much land and sustain irreparable loss that is also without

any legal right to defendants No. 3 to 8. According to him, plaintiffs being owners of disputed common bandh, so they have right to use the same for their personal usages. Defendants No. 3 to 8 cannot claim any prescriptive right there from, but are clubbing hands with defendants No. 1 and 2 trying to implement order of defendant No. 1, so according to him, balance of convenience lies in favour of plaintiffs and in case application is rejected then they will loose much land as defendants will succeeded in creating new road therefrom, so requested to allow application.

10. Shri. Pawar, Ld. Advocate of defendants No. 3 to 8, have submitted that, there was feet-way since from agricultural landed property in Block No. 463 up to Block No. 452/B within which there are Blocks No. 446/B, 446/C, 452/B etc. owned by defendants who have no any approach road, thereby, they have been cultivating only traditional crops though their lands are fertile and having irrigation facilities. As loosing handful income year-by-years, so defendants No. 3 to 8 have created cart-road from their aforesaid lands up to the northern side of plaintiffs land near to disputed bandh which caused to stop by son of plaintiff No. 2 near to disputed bandh. According to them, previously land in Block No. 424 was owned by one Mahammad Isak whereas land in Block No. 451 owned by Shakil Bhai who have consented to connect said road to Bhoom to Nawalgaon road, but meantime in year 2009-10 plaintiff No. 2 has purchased landed property in Block No. 424 and her sons have objected to create said road, thereby, road was

only constructed up to northern side bandh of defendant No. 8 in Block No. 452/B, so they all approach to defendant No. 1 and applied for granting them new road from disputed bandh, but defendant No. 2 without conducting spot inspection and preparing spot panchnama and having no any alternative road, but recorded finding that, there are available to these defendants alternative roads and rejected their application. He has further submitted that, these defendants have approached in revision to defendant No. 1 who has correctly considered grievance of these defendants and passed order in their favour granting new road from disputed bandh. He has submitted that, even though lands of these defendants fertile and irrigated, but till the date could have not taken crops except traditional, and thereby, have been losing much income so whatever new road granted by defendant No. 1 is required to create there which will not only convenient to these defendants, but according to him, plaintiffs will be benefited by said road as they can also use the same, and thereby, according to him, plaintiffs have not established *prima facie* case, nor balance of convenience in their favour, so in case application is allowed then, misery and loss of these defendants will continue, thereby, requested to reject the application.

11. In so far as *prima facie* case is concerned it does not mean a case proved to the hilt, but a case which can be said to be established if the evidence which is led in support of the same was believed and based thereon conclusion can be drawn as to the right of the plaintiffs. Question here is

whether plaintiffs have established *prima facie* case. As seen from the prayer of this application they are seeking temporary injunction to restrain defendants No. 1 and 2 from implementing order of defendant No. 1 by which granted new road from their disputed bandh whereas restraining defendants No. 3 to 8 from obstructing in their peaceful possession of said disputed bandh by creating any new road therefrom. Thus it is clear that, plaintiffs are claiming that, they are owners in possession of disputed bandh. Defendants have not denied this fact as submitted by shri. Pawar previously Block No. 424 was owned by one Mahammad Isak and Block No. 451 was owned by one Shakil Bhai who have consented to create cart road from disputed bandh. Surprising to note here that, defendants have not produced on record the affidavits of these both land owners. Those will be helpful to see in which circumstances they had given consent and whether had brought to the notice of purchasers their consent to create road. Defendants failure to bring said fact before the court creates doubt on such consent. Hence, when plaintiffs are owners in possession of disputed bandh, then defendants to explain as to why they should loose their land. This court had appointed Court Commissioner on the application of the defendants whose report Exh. 46 is disclosing that there was not found any road from disputed bandh, then shri. Mote has rightly submitted that defendant No. 2 has rightly rejected application of defendants.

12. Without showing prescriptive right to use the

bandh of plaintiffs' landed properties defendants cannot seek road from disputed bandh. Even though as per section 143(1) of the MLR Code the Tahsildar has authority to inquire into and decide claims by persons holding land in a survey number to a right of way over the boundaries of other survey number by regarding to the needs of cultivators for reasonable access to their land and his order is, as per sub-section (3) subject to the appeal and revision in accordance with the provisions of the Code, but here in the case on hand defendant No. 2 has seemed to have done spot inspection, his Talathi has prepared spot panchnama and he himself conducted inquiry and decided application of defendants who were claiming road from the disputed bandh, so his order is *prima facie* correct. Thereon also defendant No. 1 has set aside said order and substituted his own. As seen from the order of the defendant No. 1, according to him, defendant No. 2 has not considered the situation that these defendants have no any alternative road, but the defendant No. 2 has observed that such alternative roads are available. Even though it is assumed that there were not convenient roads available to these defendants, that doesn't mean they get right to access from the disputed bandh without any prescriptive right. This fact is observed by the defendant No. 2, so seeming to be proper. Worthy to note here that Court Commissioner has also observed that he has also not seen any user road on the disputed bandh.

13. When defendants have not shown their prescriptive right from disputed bandh, then how defendants can claim

any right thereon. In the said circumstances, there is substance in the submission of shri. Mote that, defendant No. 2 has rightly rejected the application of defendants No. 3 to 8 for creating new road from disputed bandh. This court has perused record attached with the plaint, whatever panchnama prepared by Talathi, Sajja Bhoom on dated 21.08.2024 therein mentioned that, defendants have approached to removal of obstruction of plaintiffs by claiming road on disputed bandh, but in panchnama of dated 24.02.2024 there was not found any user road from the disputed bandh. In the said circumstances, defendant No. 2 has rightly rejected application for defendants no. 3 to 8. In the said circumstances, it was not appropriate on the part of defendant No. 1 to grant the new road on the disputed bandh when he had no opportunity of spot inspection. Hence, it is required for defendants No. 3 to 8 to prove their right to use disputed bandh and create therefrom road as they wish. Till that plaintiffs being owners in possession of disputed bandh are entitled to enjoy the same. Hence, It can be said that they have *prima facie* case.

14. There is no substance in submission of shri. Pawar that, defendants No. 3 to 8 have right as per order of defendant No. 1 without showing such right only on the order of defendant No. 1. It is settled position of law that, section 143 of the Code confers a limited summary jurisdiction upon the Tahsildar and revise his order to the Collector to decide claims relating to a right of way over the boundaries of survey numbers. It is neither a title proceeding

nor an easement suit. In the said circumstances it was required for the defendant No. 1 to relegate defendants to approach the Civil Court to get decide their right to seek road from disputed bandh. It is seeming that, defendants No. 1 and 2 are trying to implement order of defendant No. 1. No doubt they have such authority, but their such action is not equitable. Hence, this court is of the opinion that plaintiffs have established *prima facie* case to protect their possession of disputed bandh.

15. In the said circumstances when plaintiffs have established *prima facie* case being owners they have right to use disputed bandh as per their wish, so balance of convenience lies in their favour and in case application is rejected and defendants have succeeded in implementing order of defendant No. 1 and created road from disputed bandh, then plaintiffs certainly loose handful land without any cause and compensating them. Even though defendants have contended that they have no alternative ways, but those are available, but may be somewhat inconvenient. This inconvenience cannot give equity in their favour when disputed bandh is owned by plaintiffs. Hence, irreparable loss is of the plaintiffs and the court cannot put its discretionary power in favour of defendants, but required to favour plaintiffs for protecting them. Though plaintiffs are seeking to restrain defendants No. 1 and 2 from implementing the order of defendant No. 1 to create new road from disputed bandh, but this court is of the opinion that, authorities will not proceed further when parties are

before the court with their own cases and subjected to decide those, so no reason to pass any order against the defendants No. 1 and 2, but as claimed by the plaintiffs, defendants No. 3 to 8 are taking undue advantage of the order of the defendant No. 1 and trying to create new road from disputed bandh, so they are required to restrain by issuing temporary injunction which will be caution to defendants No. 1 and 2. Hence, application deserved to allow having merit, thereby, answered points No. 1 to 3 in partly affirmative and in answer to point No. 4 proceeded to pass following order:

ORDER

1. Application is partly allowed;
2. Defendants No. 3 to 8 are restrained by issuing temporary injunction from obstructing in the peaceful possession of plaintiffs of disputed bandh by creating any new road there from.

Dated: 03.08.2026

(BHAGWAN D. PANDIT)
Civil Judge, Senior Division,
Bhoom, Dist. Osmanabad.

//____// Regular Civil Suit No. 50/2026
Shakil Pathan & Anr. -v- Sub Divisional Officer & Ors.
CNR No. MHOS120000802026

C E R T I F I C A T E

I affirm that the contents of this P D F file order/ judgment are same word to word as per the original order/judgment.

Name of Stenographer	:	N. V. Koli Stenographer Grade-II
Name of Court	:	Civil Judge Senior Division Bhoom, Tq. Bhoom Dist. Osmanabad.
Order/ Judgment date	:	03.08.2026
Order/ Judgment signed by the Presiding Officer on	:	03.08.2026
Order/ Judgment uploaded on	:	04.08.2026