

MHOS120003872026 	<u>R.CS No. 251/2026</u> <u>Subhash Vs. Tehsildar & ors.</u>
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ORDER BELOW EXH.15
(Passed on 14th July, 2026)

Defendant no.2 to 9 have filed present application for rejection of plaint as per the provisions of O 7 R 11 (d) of the CPC stating ground that, present suit is filed for challenging order passed by Tehsildar under section 5 of the Mamlatdar Court Act. According to defendant no.2 to 9, the Mamlatdar Court Act have no such a provision to challenge order passed below exh.5 before Civil Court and therefore suit is barred by law under O 7 R 11 (d) of the CPC. Hence, defendants prayed that the present plaint kindly be rejected.

2. Plaintiff by filing say strongly opposed the application on the ground that, suit is not either expressly or impliedly barred by provisions of Mamlatdar Court Act. The section 22 of the said Act provide remedy before Civil Court. Therefore, the present application is not tenable in the eyes of law and prayed for its rejection with cost. Plaintiff relied on the observations made by **Hon'ble High Court Bench at Aurangabad in Writ Petition No.5074/2022 Vimal Vs. The Sub Divisional Officer Ahmednagar Dist. Ahmednagar** wherein it is held that, the remedy of filing a Civil Suit is an adequate alternate remedy and rather a more efficacious remedy for challenging the order passed by the Mamlatdar or Collector under the provisions of Mamlatdar Courts Act. The Civil Court has the jurisdiction to decide correctness or otherwise of the order passed by authorities under the Act.

3. Heard both sides. Perused record and proceeding.

Following point arise for determination of present application. I have recorded my reasoned finding against each of them as below:-

Sr. No.	Points	Findings
1.	Whether suit is barred by law?	No
2.	What order?	As per final order

Argument:-

4. Ld. Advocate of plaintiff and defendants argued as per their contents in the application and say.

Reasons:-

As to Point Nos.1 and 2:-

5. On perusal of record it is depicted that, by filing present suit plaintiff is challenged the order of Tehsildar passed in Sanchika No.2025/Jama-2/kavi-252 dated 30/03/2026 by which Hon'ble Tehsildar granted road from the Bandh of Survey No.106 and 107 to reach survey no.105 situated at village Iet Tq. Bhoom, Dist. Osmanabad. As per the plaintiff they are owner and possessor of the survey no.106 and 107 and there is no such a road is in existence as granted by the Tehsildar in above noted order. By filing present suit plaintiff prayed relief of declaration to cancel the order passed by Tehsildar & perpetual injunction.

6. I have gone through the copy of order passed by Tehsildar which is produced on record along-with list Exh.4 Sr. No.8. The said order was passed as per the provisions of Section 5 of the Mamlatdar Courts Act. Therefore, it is necessary to see provisions of Section 5 of Mamlatdar Courts Act which is as follow:-

Power of Mamlatdar's Courts.— (1) Every Mamlatdar shall preside over a Court, which shall be called a Mamlatdar's Court, and which

shall, subject to the provisions of sections 6 and 26, have power, within such territorial limits as may from time to time be fixed by the State Government,—

(a) to remove or cause to be removed any impediment, erected otherwise than under due authority of law, to the natural flow in a defined channel or otherwise of any surface water naturally rising in or falling on any land used for agriculture, grazing, trees or crops, on to any adjacent land, where such impediment causes or is likely to cause damage to the land used for such purpose or to any such grazing, trees or crops thereon ;

(b) to give immediate possession of any lands or premises used for agriculture or grazing, or trees, or crops or fisheries, or to restore the use of water from any well, tank, canal or water-course, whether natural or artificial used for agricultural purposes to any person who has been dispossessed or deprived thereof otherwise than by due course of law, or who has become entitled to the possession or restoration thereof by reason of the determination of any tenancy or other right of any other person, not being a person who has been a former owner or part-owner, within a period of twelve years before the institution of the suit of the property or use claimed, or who is the legal representative of such former owner or part-owner :

Provided that, if in any case the Mamlatdar considers it inequitable or unduly harsh to remove or cause to be removed any such impediment or, to give possession of any such property or to restore any such use to a person who has become entitled thereto merely by reason of the determination of any such tenancy or other right, or if it appears to him that such case can be more suitably dealt with by a Civil Court, he may in his discretion refuse to exercise the

power aforesaid, but shall record in writing his reasons for such refusal.

(2) **Power to issue injunction.**— The said Court shall also, subject to the same provisions, have power within the said limits, [where any impediment referred to in sub-section (1) is erected, or an attempt has been made to erect it, or], when any person is otherwise than by due course of law disturbed or obstructed, or when an attempt has been made so to disturb or obstruct any person, in the possession of any lands or premises used for agriculture or grazing or trees or crops or fisheries or in the use of water from any well, tank, canal or water-course, whether natural or artificial used for agricultural purposes or in the use of roads or customary ways thereto, to issue an injunction to the person [erecting or who has attempted to erect such impediment, or] causing, or who has attempted to cause, such disturbance or obstruction, requiring him to refrain [from erecting or attempting to erect any such impediment or], from causing or attempting to cause any further such disturbance or obstruction.

(3) **Suit to be filed within six months.**— No suit shall be entertained by a Mamlatdar's Court unless it is brought within six months from the date on which the cause of action arose.

(4) **Cause of action.**— The cause of action shall be deemed to have arisen on the date on which the [impediment to the natural flow of surface water or the] dispossession, deprivation or determination, of tenancy or other right occurred, or which the [impediment,] disturbance or obstruction, or the attempted [impediment or] disturbance or obstruction, first commenced.

7. Plaintiff contended that, as per the provisions of Section 22 of the Mamlatdar Courts Act Civil suit is maintainable to challenge

order of Tehsildar passed below section 5 of the said Act. Therefore, it is necessary to enter into scope of the Section 22 of the Mamlatdar Courts Act which is as follow:-

Possession to be given without prejudice to rights of parties.
 — [Subject to the provisions of section 23, sub-section (2), the party in favour of whom the Mamlatdar issues an order for removal of an impediment of the party to whom the Mamlatdar gives possession or restores a use, or in whose favour an injunction is granted, shall continue to have the surface water upon his land flow unimpeded on to adjacent land or continue in possession or use, as the case may be, until otherwise decreed or ordered, or until ousted, by a competent Civil Court] :

Provided, firstly, that nothing in this section shall prevent the party against whom the Mamlatdar's decision is passed from recovering by a suit in a competent Civil Court mesne profits for the time he has been kept out of possession of any property or out of enjoyment of any use :

Provided, secondly, that in any subsequent suit or other proceeding in any Civil Court between the same parties, or other persons claiming under them, the Mamlatdar's decision respecting the possession of any property or the enjoyment of any use or respecting the title to or valuation of any crop dealt with under the proviso to sub-section (1) of section 21, shall not be held to be conclusive.

8. Combined reading of Section 5 and 22 of Mamlatdar Courts Act demonstrate that civil suit is maintainable in a Civil Court to seek relief against or independently adjudicate rights affected by an order of Tehsildar under Section 5 of the Mamlatdar Courts Act 1906. Under Section 22 of the said Act any decision, order or injunction issued by

the Tehsildar is explicitly made subservient to the final decision of competent Civil Court. If a civil Court later passes a decree contrary to the Tehsildars summary order, the Civil Court decree sets the Tehsildar order at naught. The Act does not attached absolute finality to an order passed under section 5 of the said Act. In the absence of an express or implied statutory bar, the plenary jurisdiction of Civil Court under section 9 of the CPC remains fully intact.

9. In Digambar Kale Vs. Vasant Kale & Ors Second Appeal No.111/2017 it is held by Hon'ble High Court that, a bare perusal of the provision would clearly indicate that irrespective of the decision of the Mamlatdar under section 5 (2), a party may approach a Civil Court and obtain any relief even contrary to the decision of the Mamlatdar setting it at naught. Considering the ratio laid down by Hon'ble High Court in In Digambar Kale Vs. Vasant Kale & Ors Second Appeal No.111/2017 & Vimal Nabde Vs. The Sub Divisional Officer relied by plaintiff, it is apparently clear that, there is no such express or implied bar to file suit against order of Mamlatdar passed under section 5 of the Mamlatdar Courts Act. Therefore, present application deserves to be rejected. Hence, I answered point No.1 in the negative and in answer to issue No.2, I proceed to pass the following order.

ORDER

Application stands rejected with cost.

(Dictated and pronounced in open Court.)

Dated : 14/07/2026
Place : Bhoom

(Smt. P. S. Jadhav),
2nd Jt. Civil Judge, Sr.Dn.,
Bhoom.

CERTIFICATE

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

Name of Stenographer	---	Shri. D. B. Nikam, Stenographer Gr-II
Court	---	2 nd Jt. Civil Judge Sr. Dn.,Bhoom
Date	---	14/07/2026
Order signed by the Presiding officer on	--	14/07/2026
Order uploaded on	–	14/07/2026