

ORDER BELOW EXH. 18 IN R.C.S. No. 752/2023

01. The plaintiffs have filed the application for status-quo order.

02. The plaintiffs contended that they have instituted this suit for injunction. The defendants appeared. The case is posted for written statement and say on injunction application. The defendants have prayed for time. The Exh. 5 will be decided on its own merits but till then status-quo order is required to be passed, otherwise, the defendants would take benefit of situation and create the way. If such things happened then plaintiffs would sustain the irreparable loss and they would have no remedy. If the status-quo is maintained then no prejudice would be occasioned to the defendants. Hence, till the decision of Exh. 5 application, the status-quo order is required to be passed.

03. The say of other side came to be invited. The defendant no. 4 filed the say and submitted that the defendant no. 4 require the road/ way, therefore, the application be rejected. The defendant nos. 1 to 3 filed the say and submitted that the status-quo order is against the order of Officer of the State. The Revenue Jurisdiction Act comes as a hurdle. The way is visible in view of documents filed. The claim of the plaintiffs is not as per law. There is no clearcut pleadings in the application. The public interest would be hampered if the status-quo application is allowed. The application cannot be entertained and allowed. The A.G.P for defendant nos. 1 to 3 prayed for rejection of application.

04. In view of rival contentions of the parties the following points arise for my determination and I have recorded my findings subject to the reasons as mentioned hereinafter :

Sr. No.	Points	Findings
1	Whether the plaintiffs are entitled for the status-quo order ?	In the negative.
2	What order ?	As per final order.

REASON

AS TO POINT NOS. 1 AND 2 :-

05. The plaintiffs came with the case that they have instituted this suit for injunction. The plaintiffs are agriculturists and they are having survey no. 418 at mouje-Perle, Tal. Karad. Their field area is 1 H. 18 R. The defendant no. 4 is having agricultural field in the same area/ survey number. He has filed the revenue litigations before the revenue officers on the ground of way. The defendant no. 2 granted the way on 08.07.2022 which came to be confirmed by Sub-Divisional Officer. If the way is created then there would be utilization of 100 Sq.ft. long and 10 to 14 Sq. ft wide area for creation of way. And if such a way is created then there would be loss to the plaintiffs. The plaintiffs and 23 others persons are suffering due to order of revenue officers. No proper chance is given to the plaintiffs and other persons. The order is vague and liable to be set aside. The defendant no. 4 is about to create the way by taking the undue advantage of order of defendant no. 2. In the proceedings before defendant no.2 no material/ evidence is given by defendant no. 4. No chance of cross examination came to be given to the plaintiffs. The way is granted from the boundary mark where the trees are standing. The way if created would cause injustice to the plaintiffs. Therefore, plaintiffs have instituted this suit for injunction. The defendant no. 4 came with the case that he is having agricultural field vide survey no. 418. He is an owner of the same and 7/12

extract shows his name. He has instituted the way and defendant no.2 granted the same. There was a way available from the boundary mark of fields of plaintiffs and other persons. The defendant no. 4 and other persons were using the said way from long back. There is no alternative way available to the defendant no. 4. The plaintiffs and other persons created the hurdle for use of way and planted the trees and crops due to which the way was blocked. The defendant no. 4, therefore, could not use the way and approached to the Tahsildar who granted the way and said order came to be confirmed by the Sub-Divisional officer. The order is proper and application of plaintiffs is baseless and liable to be rejected. The defendant no. 4 submitted the contentions as mentioned above before Tahsildar, Karad.

06. The plaintiffs have filed this application for restraining the defendants from creating the way. The way is granted by the Tahsildar. The same is confirmed by the Sub-Divisional officer. The perusal of the document shows that Tahsildar passed the order after referring the panchanama, statements etc. It is clear that proceedings before Tahsildar is judicial proceedings and due chances are given to the parties before passing the order. All the judicial acts are presumed to be correctly done unless the contrary is shown. The plaintiffs have challenged the order of the Tahsildar but failed to mention or prove the lacunas/ irregularities committed by the Tahsildar while conducting the proceedings. All the documents of the proceedings are not filed. On the basis of available documents it is apparent that the Tahsildar with due regard to the documents passed the order and granted the way. The order of Tahsildar has been confirmed by the Sub-Divisional Officer. The order of Sub-Divisional officer is on record. There is no apparent irregularities by Tahsildar

or Sub-Divisional Officer. In such circumstances, the status-quo application filed by the plaintiffs is weak.

07. The plaintiffs contended that the way is grated from the boundary mark where 10 feet space is unavailable. They have filed the photographs. On the contrary the defendant no. 4 also filed the photographs. The photographs filed on record shows that there was a boundary mark but it cannot be certainly said that the way is in existence. The contention of the plaintiff is that the way is/ has been effaced by the defendants, therefore, there is no material showing the way. It is also apparent that much time has been passed from the date of litigation before Tahsildar. So, it is possible that there is no material showing the way. The Section 143 of Maharashtra Land Revenue Code, 1966, authorizes the Tahsildar/ revenue officer to grant the way over the boundaries. The Tahsildar was having power to grant the way by using the power under Section 143 of M.L.R. Code. It is the contention of the plaintiff that there is unavailability of 10 feet space but, there is no reliable material on record showing it that the 10 feet way is unavailable. In such circumstances, claim for status-quo order is futile.

08. The plaintiffs have filed this suit and submitted that the order of the Tahsildar be set aside and status-quo order be maintained. The pleadings show that the Tahsildar has passed the order on 08.07.2022. The para no. 1B make this fact clear. The Section 143 of Maharashtra Land Revenue Code sub Section 4 shows that any person who is aggrieved by the decision of the Tahsildar may within the period of one year from the date of such decision institute the Civil Suit for setting aside the order or modifying the order. So, it is clear that aggrieved party has right to institute the suit in Civil Court against the order of Tahsildar within one year from the

date of order. The Tahsildar has passed the order on 08.07.2022 and para no. 1B of plaint shows such a contention. The suit is instituted on 11.09.2023 before the Court. So, it is clear that suit is filed after one year from the order, infringing the limitation provided in Section 143 of M.L.R.Code. It is doubtful whether the plaintiffs are entitled for the main relief. If any person is not entitled for the main relief then no interim relief can be granted in favour of such a person. The application of status-quo is defective in this regard and application is liable to be rejected.

09. The perusal of the document further shows that the order came to be passed in favour of the defendant no. 4. The plaintiff contended that there was no occasion for the defendant no. 4 to claim the way before Tahsildar. One document is filed by Sunil Nikam who is an adjoining owner. He prayed for way before the Tahsildar. The filing of the application by Sunil Nikam before Tahsildar shows that there was need for way to the cultivators.

10. In this case the order of Tahsildar appears to be proper one and got confirmation by Sub-Divisional officer. The way is granted over the boundary. The way is necessary for cultivation of the field of defendant no. 4. The similar application was filed by one another cultivator before Tahsildar. There is no prima facie error or violation of natural justice in order of Tahsildar. The Tahsildar is having power to grant the way from the boundary mark and same is granted by the Tahsildar. The order is proper one and no prima facie error is apparent. It is not shown that during the proceedings the Tahsildar has violated the law and natural justice. The suit is filed by the plaintiffs after one year from the date of decision of Tahsildar. The suit is filed after the period of limitation. All the above mentioned aspects make the application of the plaintiffs defective.

The status-quo order cannot be granted in this case. During the course of argument the plaintiff relied on citation of **Maharwal Khwaji Trust (Regd.) Vs. Baldev Dass Civil Appeal no. 6792/2004 dated 15.10.2004**, where Hon'ble Apex Court held that *injunction restraining alienation and proceeding with construction on property cannot be granted unless and until, a case of irreparable loss or damage is made out, Court should not permit for change of nature of property*. This citation is altogether inapplicable to the case of plaintiffs case as facts of the case and citation are different. In present case there is order of lawful authority for creation of road/ way. The creation of way under legal order cannot be said to change in the nature of the property. Moreover, no case of irreparable loss or damage is made out by the plaintiffs. The ratio is inapplicable to the case in hand. The above-mentioned discussion shows that claim of the plaintiffs for status-quo order cannot be granted and they are not entitled for status-quo order. Therefore, I answer point no. 1 in the negative and accordingly, I am inclined to pass following order.

ORDER

1. The application for status-quo order stands rejected.
2. No any order as to costs.

Date:- 27.09.2023
Karad.

(V. S. Khot)
Civil Judge, Sr.Division, Karad.