

**Order below Exh.5**

1] This suit has been instituted for declaration and mandatory injunction and by the way of this application the plaintiffs pray for temporary injunction under Order 39 Rule 1 and 2 of the Code of Civil Procedure.

2] The facts of the plaintiffs' case can be stated as under :

The plaintiffs are resident of Pedgaon, Tq. Mangrulpir, Dist. Washim. They are having an agricultural field Gat no.81/1B, having area 1H 54R. The four boundaries of the field are as under :

Towards East - The agricultural field of plaintiff no.1

Towards West - Rivulet

Towards North - Field of defendant no.1

Towards South - Field of one Abhijit

The field property is the subject matter of the litigation and here-in-after shall be referred as the "suit property" for the sake of convenience and brevity.

3] The defendant no.1 is having no concern with the suit property. The plaintiffs sowed the crop of an Orange and Soyabin. At present there are 600 trees of orange. There is an expectation of high yield. The plaintiffs fenced the suit property for protecting it. The defendant no.1 in the year 2014-2015 instituted one case for removal of encroachment against one Santosh Ghude, the owner of survey no.83. It was the contention of defendant no.1 that he has way to his field survey no.86 from the field of said Santosh and his way came to

be obstructed. He instituted the litigation before Tahsildar which came to be dismissed due to absence of the defendant no.1. Thereafter, the defendant no.1 in the year 2015 - 2016 instituted the litigation before Tahsildar, Mangrulpir against the plaintiff no.1 for clearing the way. It was the contention of defendant no.1 that he is having the way from the field of plaintiff no.1 which came to be obstructed. The said application was allowed without any opportunity given to plaintiffs. The plaintiffs being aggrieved by the order of Tahsildar approached to the SDO under Section 23 of Mamlatdar Courts Act and SDO set aside the order of Tahsildar, Mangrulpir. The SDO, Mangrulpir remanded back the litigation to Tahsildar for deciding it afresh. The Tahsildar decided the litigation and rejected the application of defendant no.1 which came to be challenged before the SDO, Mangrulpir. The SDO, Mangrulpir maintained the order of Tahsildar. The defendant no.1 got no relief from the revenue officers. He has instituted false cases against Santosh and plaintiffs.

4] The defendant no.1 on 14/08/2020 instituted one application before Tahsildar under Section 143 of MLR Code. The plaintiffs appeared and contested the litigation. The Tahsildar granted the way from the boundary of plaintiffs' field. The order of Tahsildar is wrong. Due to the rivulet the defendant no.1 cannot go from the boundary of plaintiffs field to his field/ Gat no.86. The defendant no.1 is having another way from Gat no.85. In the said litigation the spot inspection was carried out. The spot inspection reveals that the plaintiffs have sown the crops of an Orange and Soyabin and there is a

rivulet of 20 fts deep. The way granted by Tahsildar cannot be used by defendant no.1 for going to his field. In such circumstances, the order of Tahsildar is wrong. Moreover, the Tahsildar accepted it that there would be loss of crop of plaintiffs if the way is created. He directed the defendant no.1 to pay the compensation to plaintiffs. The payment of compensation is a condition precedent for using the way. The order is weak and contrary to law. If the way is granted then the plaintiffs would suffer losses. The plaintiffs left with no alternative but to file this application and challenge the order passed by Tahsildar. The plaintiffs, therefore, instituted this litigation for declaration and injunction against the defendants.

5] After institution of the suit the notices came to be issued to defendants. The defendant no.1 appeared and contested the litigation by filing the written statement vide Exh.26. The defendant no.1 denied all the contentions made by the plaintiffs. The defendant no.1 by the way of additional pleadings submitted that the order of Tahsildar dated 20/08/2020 is proper. The Tahsildar has passed the order after hearing both the sides. Initially, the Tahsildar has passed the order under Section 5 of Mamlatdar Courts Act in favour of defendant no.1. In the said litigation the Tahsildar called the spot inspection report wherein it is mentioned that there is a rivulet but there can be the way at the bank/corner area of the rivulet. The plaintiffs put forth the theory that there is another way from Gat no.85. The rivulet also comes between the survey no.85 & 86. The theme of rivulet is propounded by the plaintiffs. If the rivulet is 20fts deep as pleaded by

the plaintiffs then there cannot be any way from field survey no.85. If the way is granted then the plaintiffs would suffer no loss. The way can be given. The defendants denied the contentions of the plaintiffs and pray for rejection of the application.

6] The defendant nos.2 to 5 submitted that the plaintiffs are challenging the order of Tahsildar without exhausting the right of appeal and remedies as per the MCR Code. The present suit is barred under the Bombay Revenue Jurisdiction Act as well as Section 158 of MLR Code 1966. There is provision of appeal under Section 247 of MLR Code, therefore, this suit is untenable. The Tahsildar has followed the due procedure before passing the order. There is no cause of action for this suit. The suit and application vide Exh.5 is liable to be rejected.

7] In view of rival contentions of the suitor the following points arise for my determination and I have recorded my findings subject to the reasons mentioned hereinafter.

Sr. No	Points	Findings
1	Whether the plaintiffs are having prima facie case in their favour ?	In the Affirmative
2	Whether the balance of convenience tilts in their favour ?	In the Affirmative
3	Whether the plaintiffs would suffer irreparable loss if injunction is not granted ?	In the Affirmative
4	What order ?	As per final order

## REASONS

### As to point no.1 :

8] The plaintiffs came with the case that they are cultivators and their agricultural field is situated at Pedgaon, Tq.Mangrulpir, Dist.Washim bearing field survey/Gat no.81/1B area 1H 50R. The field of defendant no.1 is situated near their field. The plaintiffs have sown the crop of an Orange and Soyabin. The defendant no.1 has earlier instituted the cases under Section 5 of Mamlatdar Courts Act against the plaintiffs and one Santosh. The said cases came to be turned down by the revenue department. On 14/08/2020 the defendant no.1 instituted the case under Section 143 of MLR Code against the plaintiffs and the said case came to be allowed by the Tahsildar, Mangrulpir. The Tahsildar, Mangrulpir granted the way from the western boundary of the plaintiffs' field. There was no way of the defendant no.1 from the western boundary of plaintiffs' field. If the way is created then there would be the material loss to the plaintiffs. The Tahsildar in his order also accepted it that if way is created then the plaintiffs would sustain the huge losses. The Tahsildar ordered the compensation to be paid to plaintiffs by the defendant no.1 for the losses. The order of Tahsildar itself shows that there would be losses if the way is created. Moreover, the defendant no.1 cannot go through the western boundary of plaintiffs field as there is one rivulet having the depth of 20 fts. The spot inspection report makes it clear that due to rivulet the way from the western boundary of plaintiffs' field cannot be used. The order of Tahsildar is illegal and contrary to law. On the

contrary, the defendant no.1 submitted that the Tahsildar has passed the proper order after due inquiry. There is no alternative way available to defendant no.1. The defendant no.1 used the said way from long back. The defendant no.1 submitted that the plaintiffs obstructed the way earlier and he approached to Tahsildar who in turn granted the same to defendant no.1. In the spot inspection report it is written that the way can be granted at the bank of rivulet. The order of Tahsildar is perfectly legal. The defendant nos.2 to 4 submitted that the Tahsildar has passed the proper order. The application of plaintiffs is untenable as suit is barred in view of provision of appeal and revision provided under MLR Code 1966. The defendant no.1 & 2 to 4 prayed for rejection of application of injunction vide Exh.5.

9] The plaintiffs have instituted this case for injunction. It is the contention of the plaintiffs that the order of Tahsildar granting the way from survey no.81/1 and 81/1B is improper/ illegal. If the said order is valid and the way is created then it would cause monetary loss to the plaintiffs. There would be destruction of the trees. In this case, it is apparent that the Tahsildar has passed the order dated 20/08/2021 on the application of the defendant no.1 and granted the way from the western boundary of field of plaintiffs. The plaintiffs are assailing the order. The defendants supported the order and submitted that the order is properly passed. The perusal of the case papers makes it clear that the Tahsildar has passed the order and granted the way to defendant no.1. During the proceedings of Section 143 of Mamlatdar Courts Act the spot inspection report was called. The spot inspection

report is filed along with list of documents. In the spot inspection report it is mentioned that there cannot be a way from the western side boundary of plaintiffs field. There is one rivulet filled with water and the way cannot be used due to the rivulet. It is also the contention of the plaintiffs that the rivulet came across the way the rivulet is 20 fts deep. The spot inspection report as well as the contention of plaintiffs makes it clear that the way granted by the Tahsildar from the western boundary of plaintiffs field is having rivulet in the way and due to rivulet the way cannot be used for going to the field of defendant no.1. So, it is clear that the way cannot be used by the defendant no.1 as per the spot inspection report. If the rivulet come across the way then such way cannot be used by anybody. The Tahsildar has granted the bullock-cart way but the said way would be futile because the rivulet come across the way. In such circumstances, the grant of way by Tahsildar is improper and would serve no purpose. This fact goes against the defendants.

10] The order of Tahsildar dated 20/08/2021 also makes it clear that there are orange trees sowed by the plaintiffs and the creation of way would cause the destruction of trees. If the way is created then the plaintiffs would suffer the destruction of trees and the destruction of the trees would cause the monetary loss to the plaintiffs. The agricultural operation of the plaintiffs would be ruined. In such circumstances, the plaintiffs would be heavily prejudiced. This fact also goes against the case of defendants.

11] The perusal of the documents also makes it clear that the way has been granted to defendant no.1 for going to his field bearing field survey no.86 from western boundary of field survey no.81/1B. The said way is granted at the boundary. It is also apparent from the order of Tahsildar that if the way is created then there would be loss to trees and crops. It ultimately shows that some portion of the way is situated in the field otherwise no question of destruction of the trees would arise. Moreover, there is no material suggesting it that the boundary was having sufficient width. In such circumstances there is strong suspicion that the way granted by Tahsildar is going from the boundary as well as the field of plaintiffs. In such circumstances, the order of Tahsildar cannot be said to be proper one.

12] The perusal of the record makes it clear that the defendant no.1 earlier approached to Tahsildar Court for clearing the way obstructed by one Santosh. It was the contention of defendant no.1 that said Santosh obstructed the way on 24/06/2015. He closed the way. Thereafter, the defendant no.1 filed the application against the plaintiffs for clearing the obstruction made by the plaintiffs in the year 2017. The revenue officers rejected the application filed by the defendant no.1 for clearing the obstruction under Section 5 of Mamlatdar Courts Act. This position/ factual situation shows that the defendant no.1 is having the habit of making the applications. It ultimately shows that he was having the way from the field of Santosh. As per the contention of defendant no.1 he was using the way from the western boundary of field survey no.83 owned by Santosh. If such

is a position then it can be said that there is alternative way available to defendant no.1. The Tahsildar in his order has not considered this aspect. He granted the way from the field of plaintiffs at the cost of loss of crops. The grant of way by Tahsildar appears to be unreasonable. Moreover, it is admitted by the defendant no.1 that the government land is abutting to his land. If the government land is abutting to his land then the way could be granted from the said land.

13] In this case, the order of Tahsildar granting the way to defendant no.1 under Section 143 of MLR Code is unreasonable. There is prima facie material against the order. The main circumstances appearing against the order is an impediment due to rivulet. The spot inspection report specifically shows that there is a rivulet in the granted way due to which the access cannot be made to the field of defendant no.1. So, in such circumstances the grant of way by Tahsildar is useless. The said way is not going to serve any purpose. The plaintiffs have prayed injunction against the order of Tahsildar. If any unreasonable order is made by civil authority then the Civil Court is having jurisdiction to grant the injunction. The order of Tahsildar would be useless for defendant no.1 if followed and the way is created. The prima facie material shows that the order is unreasonable. The plaintiffs are having prima facie case in their favour. So, I replied point no.1 in affirmative.

**As to point nos.2 & 3 :**

14] As stated earlier, the order of Tahsildar is unreasonable. The way granted by him cannot be used due to the rivulet. If the way is

created then the plaintiffs would sustain the losses. The order itself shows that the creation of way would cause the damage to the crops. If the way is created then the agricultural operations of the plaintiffs would be ruined. The creation of way would be detrimental of the plaintiffs than the defendants. The loss of agricultural operations and the loss of yield would seriously affect the plaintiffs and also the public at large to some extent. The balance of convenience arise in favour of plaintiffs. As far as the irreparable loss is concerned, the plaintiffs would suffer irreparable loss if the injunction is denied. The order itself makes it clear that there would be damage to the crops if the way is created. The losses of the plaintiffs would not be easily measurable. The creation of way would permanently cause loss to the agricultural operations. There is prima facie material on record which shows that the way would not serve any purpose due to rivulet. The spot inspection report shows as such. It is also apparent that there is no contention of defendant no.1 that the agricultural operation in his field has been stagnated. So, it is apparent that the agricultural operation of defendant no.1 is going on. This also goes against the case of defendant no.1. The above mentioned discussion makes it clear that the balance of convenience and irreparable loss arise in favour of plaintiffs. Therefore, my answer to point nos.2 & 3 are in affirmative.

15] The counsel for defendant nos.2 to 5 resorted to the defence that the suit and application for Exh.5 is untenable in view of Section 41(h) of Specific Relief Act as applicants have efficacious remedy/relief obtainable in usual mode i.e. by filing appeal or revision. The

suit is untenable. In support of his contention he filed the citation of *The Municipal Corporation of Delhi vs. Suresh Chandra Jaipuria and another, AIR 1976 SC 2621* wherein the Hon'ble Apex Court vide para no.10 observed as under :

It also seems that the attention of the learned Judge was not directed towards Section 41(h) of the Specific Relief Act, 1963, which lays down that an injunction, which is a discretionary equitable relief, cannot be granted when an equally efficacious relief is obtainable in any other usual mode or proceeding except in cases of breach of trust. Learned Counsel for the appellant Corporation points out that there was the ordinary machinery of appeal, under Section 169 of the Delhi Municipal Corporation Act, 1957, open to the assessee respondent. It had not even been found that the respondent was unable to deposit the necessary amount before filing the appeal. However, we abstain from deciding the question whether a prima facie case exists for the grant of interim injunction. On the contrary, the counsel for plaintiff submitted that the suit is not barred under Section 41(h) of the Specific Relief Act.

16] The counsel for defendant nos.2 to 5 resorted to the defence that the suit is barred under Section 41(h) of the Specific Relief Act and the injunction cannot be granted when there is a provision of revision and appeal and Tahsildar's order can be challenged in revision. Therefore, the civil suit is untenable and the injunction cannot be granted in view of Section 41(h) of the Specific Relief Act. It is true that Section 41(h) of the Specific Relief Act mandates that

whenever an equally efficacious remedy is obtainable in any other usual form then the injunction cannot be granted. In case in hand it is necessary to consider whether the injunction is barred in view of Section 41(h) of the Specific Relief Act. The Hon'ble Allahabad High Court in the case of *Municipal Board, Mathura vs. Radha Bullabh reported in AIR 1949 All 301* made it clear that the question whether an equally efficacious relief can certainly be obtained by any other usual mode of proceeding is a question of fact to be determined in each case on its own circumstances and no hard and fast rule can be laid down in the matter. In case in hand there is a question whether the injunction can be granted or not in view of Section 41(h) of the Specific Relief Act. It is necessary to see Section 143 of MLR Code. Section 143 of MLR Code is somewhat different and provide two reliefs to the aggrieved person. The person aggrieved by the decision of Tahsildar can avail remedy of appeal or revision or he can institute the civil suit within the period of one year from the date of decision of Tahsildar to set it aside or modified. The section at a time provide two remedies. In the citation pointed out by the learned counsel it is true that the Hon'ble Supreme Court observed that Section 41(h) of the Specific Relief Act was a hurdle for grant of injunction. In the said citation, the civil suit was filed against assessment of tax. Section 169 of Delhi Municipal Corporation Act provides a separate forum for the aggrieved person. Section 169 of the said Act was not same to Section 143 of MLR Code. Section 169 of Delhi Municipal Corporation Act, 1957 provides a forum of District Court to the aggrieved person. In Section 143 of MLR Code two remedies are provided. So, the citation

and its ratio would not be applicable to the case in hand. The bar mentioned in Section 41(h) of the Specific Relief Act cannot apply to the present case as Section 143 of MLR Code provides two forums to the aggrieved person. In connection with Section 169 of Delhi Municipal Corporation Act one citation is required to be considered. In **Municipal Corporation Delhi vs. C L Bhatra reported in 1994 Scale (3)719** wherein the Hon'ble Supreme Court took the view that non filing of statutory remedy of appeal had not been availed, the order was passed without deciding the question of maintainability, grant of injunction/stay is abuse of process of law. Besides it would paralyse the entire working of Municipal Corporation and render it incapable to meet its financial obligation. The interim order was accordingly set aside. In the said citation the Hon'ble Supreme Court speaks about the statutory remedy and observed that the statutory remedy was not availed, therefore, interim order was set aside. But in case in hand there are two statutory remedies. One is appeal and the other is filing of suit. Therefore, the filing of suit cannot be barred because there is a remedy of appeal. In the citation of ***Hemraj Kothiramji Hatewar & Ors vs. Sub-Divisional Officer, Mouda & Ors, 2016 (2) Mh.L.J. 401 (NB)*** the Hon'ble Bombay High Court observed that the petitioners have alternate statutory remedy available. When the statute provide two remedies then it is open for aggrieved person to avail anyone of them. The ratio is applicable to the case in hand. In such circumstances, it is not necessary for the aggrieved person to file appeal first and then turn to Civil Court. When the civil suit is not barred then there cannot be a bar for grant of injunction. So, the bar

created by Section 41(h) of the Specific Relief Act would not be applicable in case in hand. Moreover, the MLR Code is special statute applicable to agricultural lands and the State of Maharashtra. The Specific Relief Act is general law and whenever there is a special law the special law will prevail over the general. So, with due respect to the citation of the Hon'ble Apex Court filed by the counsel for defendant nos.2 to 5, I hold that the bar created by Section 41(h) of the Specific Relief Act is inapplicable.

**As to point no.4 :**

17] In this case, the above mentioned discussion makes it clear that the plaintiffs are having the prima facie case, the balance of convenience and irreparable loss in their favour. The order of Tahsildar is unreasonable. There are certain facts against the order. The order if carried out then it would serve no purpose as the way is occluded by the rivulet. The Tahsildar and the defendant no.1 are acting to create the way. The letter issued by plaintiffs show that the process is started for paying the compensation and thereafter, the road will be cleared. The Tahsildar and the defendant no.1 is on the way to create the way. The injunction is required to be granted. So, I am inclined to pass the following order resulting in grant of injunction.

**ORDER**

- 1] The application is hereby allowed.
- 2] The defendant nos.1 to 4 are hereby restrained from creating the way under the patronage of the order of

Tahsildar dated 20/08/2021 through themselves or any other person including subordinates of defendant nos.2 to 4 till further orders.

3] No any order as to costs.

Sd/-

( V.S.Khot )

Civil Judge Senior Division,  
Mangrulpir.

Dt.17/02/2022

CERTIFICATE

I affirm that the contents of this PDF file order are same word to word, as per original judgment.

- 1) Name of Stenographer :- R.K.Pawar, Stenographer
- 2) Name of Court :- Civil Judge (S.D.), Mangrulpir.
- 3) Date :- 17/02/2022
- 4) Order signed by the presiding officer on :- 05/03/2022
- 5) Order uploaded on :- 05/03/2022