



RCS No. 232/2026

Shantaram Keda V/s. Sandip Prabhakar

CNR No. MHNS020010182026

ORDER PASSED BELOW EXH. 5

(Dated 14.08.2026)

The applicants have filed an application under Order XXXIX Rule 1 & 2 of The Civil Procedure Code, 1908 (in short CPC) for grant of temporary injunction filed by applicant for seeking relief against the non-applicants. The non-applicant no.1 only given reply at Exh. 23, the other non-applicant though served with summons but did not appear, hence the application proceeded further without reply as the both the party's shown urgency and readiness for argument on this application.

POINTS FOR CONSIDERATION: -

2. Considering the pleadings, arguments advanced by the Ld. Advocate of applicants Shri K. B. Wagh & Ld. Adv. Shri V.R. Agrawal for the non-applicants, following points arises for determination. They are answered with my findings thereon for the reasons given below:-

Sr. No.	<u>Points</u>	<u>Findings</u>
i)	Whether the applicants have made out prima-facie case?	No
ii)	Whether the applicants have proved that balance of convenience lies in their favour?	No

iii)	Whether the applicants will suffer irreparable loss if temporary injunction is not granted?	No
iv)	Whether applicants are entitled for temporary injunction as prayed?	No
v)	What order?	Application Exh. 5 is rejected.

REASONS & FINDINGS

POINTS No.1 to 5 : -

3. All the points are related with each other's, hence in order to avoid repetitions they are taken together for the discussion.

4. For the grant of a temporary injunction, an applicant must satisfy three cardinal principles cumulatively. The absence of even one principle disentitle the party from seeking equitable relief. The three essential ingredients are prima facie case, balance of convenience, irreparable injury. The onus lies entirely on the applicant to establish all three elements simultaneously. A failure to satisfy any single condition is fatal to the application. Furthermore, the existence of a prima facie case is a condition precedent; unless prima facie case is not established, the questions of balance of convenience and irreparable injury do not arise for the court's consideration.

5. Now, in the light of these cardinal principles, it is necessary to consider the present application. The applicant's primary grievance is that non-applicant no. 6 (the Tahsildar, Kalwan, Nashik) is attempting to act upon the application of non-applicants no. 1 to 4 to forcefully create a right of way through the applicant's field, despite no such path ever existing on the ground or in revenue records. While non-applicant no. 1 has strongly opposed the application by contending that a traditional way and a *Nala* previously existed but were destroyed and leveled by the applicants for cultivation, and now taking crop on it by illegally increasing the area of his field. The present suit is also not valued properly though the rates of the per acre of the said land is very high. He has also relied on reported judgments of Hon'ble Bombay High Court which are as under:-

Pandurang Bauche V/s. Jalimdhar Mh.L.J. 2009(3), page 467 in which it is held that right to claim reasonable access to their fields independent of easementary rights under the Easement Act, the Tahsildar has the authority to grant access based on the needs of cultivators for reasonable access to their agriculture field.

Harishchadra Ughade V/s. state of Maharashtra 2013(5) AIR (Bom) in which it is held that section 143 of MLR Code confers an independent right on

an owner of agriculture land to claim a right of way for reasonable access to their field.

6. So far as an objection regarding Court fee which has been raised by non-applicants is concerned, the extent of the area currently in the applicant's possession cannot be measured & calculated at present. Moreover, court fees may be recovered at any stage of the proceedings; therefore, the application for a temporary injunction should not be rejected on this basis.

7. Now coming to the first cardinal principle i.e. whether the applicants have a prima facie case in their favour. The applicants are the owners of field Gat No. 378/2 (area 00.38R), towards western side of the said field there is a "Shiv Lane". Non-Applicants No. 1 to 4 and adjacent landowners filed an application before the non-applicant no. 6 under the relevant Government Resolution to clear the way. Based on this, non-applicant no. 6 ordered the "Mandal Adhikari" to perform a site inspection to inspect the path through the applicants' field, therefore the act of land holders are within the parameter of law as the statutory rights are available to them to approach concerned authority to claim a right of way for reasonable access to their field, therefore the citations on which non-applicant relied are squarely applicable here given facts of the present case.

8. The “Mandal Adhikar” also acted on the basis of order of Tahsildar and had given report regarding “non-existence of Nala”, therefore the non-applicant no. 6 issued notice on 10/02/2025 and kept the matter for hearing on 25/02/2025 but on that day no any solution was found due to non-existence of Nala, therefore the proceeding was filed by the non-applicant no.6. according to the applicants in spite of this the non-applicant no. 6 on 01/03/2025 without issuing any notice to the applicants came to the spot and tried to clear the way, but applicants and other adjoining owners obstructed them, therefore the non-applicants no. 1 to 4 filed applications before the Sub-Divisional Officer to clear the way. Who has also issued notice to the applicants on 23/05/2025 and called them to remain present on 30/05/2025 to clear the way as per village map. Then again non-applicant no. 6 on 14/11/2025 issued notice to the applicants & others and informed them to open the Nala for use on 28/11/2025, and acted accordingly, but the Land Record Officer informed that no such way can clear from Nala, and therefore proceeding was stopped there.

9. Upon a consideration of the facts and circumstances of the present case, it is evident that the initial phase of the proceedings was instituted before the Tahsildar and subsequently elevated to the Sub-Divisional Officer by way of application. Under the statutory framework of the Mamlatdars'

Courts Act, 1906 and the Maharashtra Land Revenue Code, 1966 (specifically Section 143), summary powers are indeed vested in the revenue authorities to decide disputes pertaining to rights of way and the removal of obstructions to agricultural access. However, such jurisdiction exercised by the revenue officers is essentially summary in character and limited to maintaining public order, immediate access, or enforcing statutory remedies under revenue administration. It does not oust or curtail the plenary jurisdiction of the Civil Court under Section 9 of the Code of Civil Procedure, 1908 (CPC) to decide the rights of parties.

10. While the Revenue Court determines the immediate accessibility rights on a summary basis, the Civil Court alone possesses the statutory power and exclusive competence to adjudicate civil rights, declare title, determine customary or prescriptive easementary rights under the Indian Easements Act, 1882, and grant permanent injunctions. It is a well-settled principle of law that any order or finding passed by a Revenue Authority under the Mamlatdars' Courts Act or the MLR Code remains subject to the final declaration and decree of a competent Civil Court. Consequently, a decree rendered by a Civil Court on a right of way binds the parties and overrides any conflicting order passed by the Tahsildar or SDO. Therefore, the objection of jurisdiction of this court raised by non-applicants has no force in law.

11. It is necessary to mention here that the applicants herein seek an order of restraining non-applicant no. 6, thereby restraining him from granting or sanctioning any alleged right of way to non-applicants no. 1 to 4 through the land/field belonging to the applicants, particularly when no such path or customary way exists on the spot.

12. In this context, it is vital to rely upon the Spot Panchanama dt. 28/01/2024, drawn by the “Mandal Adhikari”, a document explicitly admitted and relied upon by both parties. A bare perusal of the said Panchanama, read along with the official revenue map, reveals that a *Nala* (watercourse) originally traversed through the applicants' Gat number as well as adjoining Gat numbers. However, as per the actual physical inspection recorded in the Panchanama, the said *Nala* no longer exists on the site, as the respective landholders have leveled the terrain and brought it under active cultivation. In addition to this it is also necessary to mention here that a bare reading of the Spot Panchanama dt. 28/01/2024 unequivocally establishes that a natural *Nala* (watercourse) historically and legally existed traversing through the applicants' Gat number as well as adjoining lands. But the applicant trying to pose that said Nala in old Map has partially shown in his field and not from the Shiv Lane. Though it may be but the very fact recorded in the Panchanama that the applicants and neighboring landholders subsequently

leveled the said *Nala* to bring the land under active cultivation serves as an explicit admission of its prior existence. Therefore, such interpretation of the village map by the applicants for their own convenience and benefit is improper, particularly since the physical marks and signs of the Nala's existence were verified on the spot during the Panchanama.

13. It is a settled principle of law under the Maharashtra Land Revenue Code, 1966 and the Indian Easements Act, 1882 that private individuals possess no legal right or authority to unilaterally obstruct, destroy, or obliterate a natural watercourse, traditional pathway, or public *Nala* for personal agricultural gain. The illegal acts of the applicants in altering the topography of the land cannot be used to extinguish an established right of passage or natural water channel to the detriment of adjoining landholders. Consequently, the applicants cannot be permitted to profit from their own legal wrong (*nullus commodum capere potest de injuria sua propria*) to deny passage to non-applicants no. 1 to 4. Hence the applicants have no case to contest further and no prima facie case in their favour.

14. Now, coming to another cardinal principle namely, in whose favor the balance of convenience lies, it is evident that due to the acts of the applicants and the other joint owners, the non-applicants and neighboring field owners are

suffering. The resulting water logging in their fields has ruined their crops. The applicant's attempt to gain an undue advantage by leveling the *Nala* is a purely self-serving act that inflicts severe financial loss on the neighboring field owners, leaving them on the verge of starvation, and therefore only they tried to knock the door of concerned authority, therefore the act of concerned authority is well within the parameter of the law, and as per the Government Resolution which time to time issued by the Government. Therefore, no balance of convenience lies in favor of applicants.

15. The last cardinal principle namely to whom irreparable loss may be caused due to granting or non-granting of temporary injunction. At the costs of repetition it is necessary to mention here that the old village map shows that the alleged *Nala* in the field of applicants was in existence since last so many years or even from the British era, the applicants now claiming its non-existence as per alleged panchanama, but as it was in existence and now the applicants destroyed it by levelling their field, therefore, it is their fault, and they have to face the loss if any due to re-opening of *Nala*, further for their fault or greed the other adjoining field owners need not be suffered any loss, hence granting of temporary injunction may cause more irreparable loss to the non-applicants than the applicants. Hence applicants are not entitled for any relief of temporary injunction, therefore points no. 1 to 4 are answered in the negative and as per point no. 5

following order is passed:-

ORDER

1. Application Exh. 5 is rejected.
2. Costs in main cause.

Nashik
Dt-14/08/2026

(Rupali C. Narwadiya)
2nd Jt. Civil Judge, Sr. Dn.,
Nashik.