

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2713/2021

PETITIONER : Shri Sandip Bhagvatrao Bhakare
Aged about 40, Occu. Service,
R/o Dilalpur, Taluka Chandur Bazar,
District Amravati.

...VERSUS...

RESPONDENTS : 1. Shri Santosh Mohanlal Dave,

2. Shri Vijay Mohanlal Dave,

Both R/o Marwadipura Chandur Bazar,
District Amravati.

3. Shri Satish Govindrao Sapdhare.

4. Shri Gondrao Devmanji Sapdhare

Both R/o Youngsters Chauk,
Chandur Bazar, District Amravati.

5. Nayab Tahsildar Chandur Bazar,
Tahsildar Office, Chandur Bazar,
District Amravati.

6. Deputy Collector and Sub-Divisional
Officer Achalpur, District Amravati.

Mr. A.M. Kukday, Advocate for the petitioner
Mr. Deol Pathak, Advocate for respondent nos.1 and 2
Mr. R.D. Hajare, Advocate for respondent no.3
Mr. S.M. Ukey, Addl. G.P for respondent nos.5 and 6

CORAM : AVINASH G. GHAROTE, J.

DATE : 30/09/2021

ORAL JUDGMENT

1. Heard Mr. Kukday, learned Counsel for the petitioner, Mr. Deol Pathak, learned Counsel for respondent nos. 1 and 2, Mr. Hazare, learned Counsel for respondent no.3 and Mr. Ukey, learned Additional Government Pleader for respondent nos. 5 and 6. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Counsel for the rival parties.

2. The writ petition raises a challenge to the order passed by the learned Mamlatdar, in proceedings initiated before him under the provisions of Section 5 of the Mamlatdar's Courts Act, 1906 ("the M.C. Act, 1906", for short, hereinafter), whereby by an order dated 10/6/2021, temporary interim injunction was granted by him on the application filed by the respondent no.1, against the petitioner, directing the petitioner, to make open the way. A Revision under Section 23 of the M.C. Act, 1906, came to be filed by the present

petitioner, which came to be dismissed by the order dated 12/7/2021, maintaining the interim order dated 10/6/2021.

3. Mr. Amit Kukday, learned Counsel for the petitioner, raises an interesting question, by contending, that under the provisions of the M.C. Act, 1906, the Mamlatdar does not have any power to grant any interim relief of any nature whatsoever. The powers conferred upon the learned Mamlatdar, only empower him to decide the issue finally upon inspection of the disputed property and recording such evidence as may be presented before him by the respective parties. He places reliance upon the absence of a provision in the Mamlatdar's Courts Act to buttress his contention by submitting that it was never the intention of the legislature, to empower the Mamlatdar with powers to pass interim orders and therefore in absence of such powers, both the impugned orders, are clearly without jurisdiction. Mr. Kukday, learned Counsel for the petitioner places his reliance upon the judgment of this court, in ***Sanjay s/o Dinkar Kulkarni V/s Shankarappa s/o Ganappa Pasarakar***, passed in Civil Revision Application No.244/1975, dated 7/8/1975, wherein a learned Single Judge of this Court has dealt

with this issue, and come to the conclusion that the powers under Order XXXIX Rule 2 of C.P.C. or for that matter the powers to pass any temporary or interim injunction are not available to the learned Mamlatdar in proceedings initiated before him under Section 5 of the M.C. Act, 1906, in view of which, he submits, that the impugned orders ought to go.

4. Mr. Deol Pathak, learned Counsel for the respondent nos.1 and 2 by placing reliance upon the language of Section 5 (a) & (b) of the M.C. Act, 1906, and specifically the expression "to give immediate possession", contends that the same would indicate the empowerment of learned Mamlatdar to grant an interim relief, in absence of which, the expression "to give immediate possession", would become redundant. He further places reliance upon the language of Section 5 (2) of the M.C. Act, 1906, to contend that the power to issue injunction is specifically conferred upon the learned Mamlatdar, which would include and encompass, a power to issue an interim injunction, as in absence of which, according to him, the provisions of Section 5(2) of the M.C. Act, 1906 would be rendered otiose. Mr. Pathak, learned Counsel for the respondent nos.1 and 2

further submits that the Court of the Mamlatdar, under the provisions of M.C. Act, 1906, has been specifically created as a Civil Court and it has all the attributes of a Civil Court. He submits that the proceedings before the learned Mamlatdar, are styled as a 'suit' and commence with a plaint, the requirements of which, are laid down in Section 7 of the M.C. Act, 1906. The provisions of Section 12 of the M.C. Act, 1906 further enjoin upon the learned Mamlatdar, to reject the plaint in case it is found that there is no compliance with the requirements of Clause - (a) to (f), as contained in Section 12, which according to him, is akin to the provisions of Order VII Rule 11 (a) to (f) of the C.P.C., which confer power upon the Court to reject the plaint. He further submits that the learned Mamlatdar under the provisions of Section 15 is empowered to summon and enforce the attendance of witnesses, to produce documents; to proceed *ex parte*; and decide the proceedings; to set aside such *ex parte* order; and also to dismiss the suit under Section 16(1) on non-appearance of the party initiating the proceedings. He further submits, that the parties before the learned Mamlatdar are called as plaintiffs and defendants. He further submits that learned Mamlatdar also has been entrusted the powers

of issuing warrant for the arrest of any witnesses [Section 15(2)] on his failure to attend upon being summoned. The Mamlatdar also has powers to administer oath and record the evidence; power to add parties; bring legal heirs on record; try the issues, as indicated in Section 19; power to inspect; power to punish for disobedience of an injunction granted; power to deliver possession; power to issue injunctions; power to award costs etc.

5. He submits that the provisions of the M.C. Act, 1906, grant all the powers, and attributes of a Court, to the Mamlatdar, as the C.P.C. confers upon a Court and therefore, the power to issue injunction, would be an inherent power included in the powers of a Court of competent jurisdiction empowered to decide the *lis* before him. He submits that the Court of a Mamlatdar, would in fact be a Civil Court in that view of the matter, possessing inherent powers to grant injunction of an interim nature also. He submits that no fault can be found with the impugned orders. Learned Counsel, places reliance upon *Ashok Devman Gangurde Vs. Dagur Chiman Gangurde and others, 2021 (2) Mh.L.J. 460*, to submit that Section 11 of the C.P.C. is applicable to proceedings under the M.C. Act, 1906. Further

reliance is placed upon *Lala Dagadu Kale Vs. Additional Commissioner, Nashik and others, 2010 (3) Mh.L.J. 813* which holds that the power under Section 5(2) of the M.C. Act, 1906 is a power to grant injunction either perpetual or mandatory and also temporary. Further reliance is placed on *Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, AIR 1962 SC 527* to submit that the power to issue temporary injunction, has to be read into the inherent powers of the Court, even in cases, which were not so prescribed. Reliance is also placed on the Form in Schedule-C of the M.C. Act, 1906 which is a Form of injunction to be issued under Section 21(2) of the M.C. Act, 1906 to submit that the language thereof would indicate that it was meant for the purpose of an interim relief which would indicate the presence of the power to grant temporary injunction.

6. He further lays stress upon the meaning of the word "immediate", which means at once; without delay, as held in *P. Orr and Sons (P) Ltd. Vs. Associated Publishers (Madras) Limited, (1991) 1 SCC 301*. He also relies upon the definition of 'immediate' as stated in Black's Law dictionary to mean instant, without delay.

7. He further relies upon the provisions of Section 67(2), 69(1), 68, 69, 70 and 72 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (“the M.T.A.L. Act of 1948”, for short hereinafter), in support of his contention that the Mamlatdar has all the powers of a Civil Court and therefore, those powers would include the right to grant temporary injunction also.

8. Reliance is also placed on *Sadashiv Mahadeo Kumbhar Vs. Balkrishna Bhikaji Walimbe and another, 2001 SCC OnLine Bombay 1048* (para 6), which holds that the provisions of the M.C. Act, 1906 are parallel to the Code of Civil Procedure and therefore, it will have to be held that Mamlatdar’s Courts are empowered to exercise the right of review of its order and also if necessary to do so in the interest of justice; *Narayan Nagappa Hegde Vs. Shankar Narasimha Bhatt, AIR 1966 Mysore 5*, which holds that the jurisdiction of the Mamlatdar is identical with that of the Civil Court and therefore, is subordinate to the High Court.

9. Mr. Hajare, learned Counsel for the respondent No.3 submits that the Code of Civil Procedure, 1908 is a later statute than

the M.C. Act, 1906. According to him, there is no provision in the M.C. Act, 1906 which adopts the Code of Civil Procedure to proceedings conducted under the M.C. Act, 1906 and therefore, the question of the powers under Order XXXIX, Rules 1 and 2 of C.P.C. being available to the learned Mamlatdar in proceedings under Section 5 of the M.C. Act, 1906 does not arise at all.

10. Mr. Ukey, learned Additional Government Pleader, for the respondent nos.5 and 6, submits, that the powers under Order XXXIX, Rules 1 and 2 of C.P.C. are not available to the proceedings under M.C. Act, 1906, as the applicability of the same, is not envisaged by the M.C. Act, 1906, which is a complete Code in itself. He further relies upon ***State of Kerala Vs. Mathai Verghese and others, AIR 1987 SC 33***, to contend that the expressions used in the Statute are to be strictly construed and no meaning which is not apparent from a plain reading thereof can be attributed or imported into the Statute. He, therefore, submits that a power to grant injunction, cannot be read into the provisions of the M.C. Act, 1906, since the same is not included.

11. The M.C. Act, 1906 was enacted to consolidate and amend the law relating to the powers and procedures of Mamlatdar's Courts and was brought into force with effect from 29/10/1906. The provisions of the Act indicate that the Mamlatdar has to preside over the Court which is called as Mamlatdar's Court which is enjoined with the power as contemplated under Section 5 (1) (a) and (b), as well as Section 5(2) of the M.C. Act, 1906. The proceedings before the Mamlatdar are termed as a suit. Section 6 confers powers upon the Collector to transfer any suit from one Mamlatdar's Court to another; Section 7 requires that all suits are to be commenced by a plaint which is to be presented to the Mamlatdar in open Court by the plaintiff, the contents whereof are listed in Section 7(a) to (f). Section 8 permits informal petitions to be treated as plaints and Section 9 enjoins the Mamlatdar, in case the claim does not contain the particulars specified in Section 7 or is unnecessarily prolix to examine the plaintiff upon oath in order to ascertain from him such of the particulars specified in Section 7 as are not clearly or correctly stated in the plaint and to reduce the examination in writing in the form of an endorsement or Annexure to the plaint, which is to be deemed to be a part of the plaint.

Section 10 requires the plaint to be subscribed and verified by the plaintiff, whereas Section 11 requires the endorsement by the Mamlatdar as to such verification. Section 12 requires the Mamlatdar to reject the plaint in case the requirements thereof are not complied, whereas Section 13 empowers him to return the plaint upon the grounds stated therein. Upon the plaint being admitted, notices are to be issued to the other side for fixing the trial of the case. The provisions of Section 15 empowers the Mamlatdar to ensure and enforce attendance of the witnesses. Section 16 empowers him to dismiss the plaint in default and so also to proceed *ex parte* and set aside the order of default. Similarly power to add parties (Section 18); power to bring legal heirs on record are also conferred upon him. Section 19 delineates what issues are to be decided by the Mamlatdar. Section 19(2) empowers him to inspect the property in dispute or cause it to be so inspected. Sections 21 and 22 relate to the powers of the Mamlatdar to execute his own orders. Section 23(3) provides that where a Revisional Authority is seized of a revision filed under Section 23(2), it shall be deemed to be a Court. Thus, the provisions of the M.C. Act, 1906 indicate that for the purpose of proceedings under the M.C. Act, 1906 the

Mamlatdar is a Court and the M.C. Act, 1906 is a complete Code in itself, as powers have been conferred upon the learned Mamlatdar to fully and effectively decide any dispute of the nature as specified in Section 5, which may arise before him and also to enforce such decision.

12. The conspectus of the entire provisions as contained in the M.C. Act, 1906 indicates absence of a provision to grant temporary relief, as is contained in Section 94 or Order XXXIX, Rules 1 and 2 of C.P.C. The question therefore arises, that when the provisions of Section 5(1) of the M.C. Act, 1906 enjoin upon the learned Mamlatdar to grant an immediate relief, whether the same would have the meaning of having conferred a power upon the learned Mamlatdar to grant temporary injunction as is contemplated by Order XXXIX, Rules 1 and 2 of C.P.C.

13. What is also material to note is that the Code of Civil Procedure, 1908, though a later Statute, has not been made applicable in all its forms to proceedings under the M.C. Act, 1906.

14. Before the advent of the Code of Civil Procedure, 1908, the field was governed by the Code of Civil Procedure, 1882, which was an extensive Code dealing with the procedure, regarding the conduct of the suits before the Courts. Chapter 35, Sections 492 to 497 of the same dealt with grant of temporary injunctions. It is, therefore, apparent that when the M.C. Act, 1906 was enacted the Code of Civil Procedure, 1882 was equally in force, containing the above provisions for grant of temporary injunction. It was open for the legislature while enacting the M.C. Act, 1906, to have made the provisions of Chapter 35 of C.P.C., 1882, applicable to proceedings under the M.C. Act, 1906. That however has not been done. Even after the enactment of the Code of Civil Procedure, 1908, the legislature by amendment to Section 3(b)(ii), while elucidating the meaning of the words 'plaintiff and defendant' has amended the above provision to indicate that the recognized agent of a plaintiff or defendant as defined in Section 37 of the C.P.C., 1908, would be included in the words 'plaintiff and defendant', however, the Code of Civil Procedure, 1908, has nowhere, been made applicable to proceedings under the M.C. Act, 1906. It is, thus, apparent that the legislature was not oblivious to the provisions of the M.C. Act, 1906

and the absence of the power to grant temporary injunction therein, in spite of which, it conspicuously appears to have taken a decision not to confer such a power to grant temporary injunction upon the learned Mamlatdar, while enacting the M.C. Act, 1906, or by way of any amendment subsequent thereto.

15. It is a settled position of law, that the provisions of a Statute have to be construed and read to have the meaning, power and authority, which is specifically conferred by the provisions of the said Statute and not otherwise. Nothing can be imported into the Statute which has not been provided therein, by adopting any device or means.

16. One cannot be oblivious to the position that the Courts function and operate, due to the powers as vested in them, by the Statutes creating them and conferring jurisdiction upon Court.

17. Taking the above position into consideration, it is necessary to consider the argument advanced by Mr. Pathak, learned Counsel for the respondent nos.1 and 2 based upon the provisions of

Section 67 to 69 (1), 70 and 72 of the M.T.A.L. Act of 1948. Section 67 of the M.T.A.L. Act of 1948 empowers the State Government to appoint an officer not below the rank of a Mamlatdar to be the Tribunal and to exercise the powers and perform the duties and functions of the Tribunal under the said Act in the areas for which it is so appointed. The powers which are to be exercised by the Mamlatdar are listed in Section 70. It is material to note that the powers which are exercisable under Section 70 by the Mamlatdar under the provision of the M.T.A.L. Act of 1948 are separate and distinct from those exercisable by him under Section 5 of the M.C. Act, 1906. Merely because the Mamlatdar has also been conferred certain powers and authority to be exercised under the provisions of the M.T.A.L. Act of 1948 the same would not mean that the Mamlatdar would be capable of exercising powers under the M.C. Act, 1906, which is a different Statute altogether. It would be also material to note that even Section 70 of the M.T.A.L. Act of 1948, does not confer upon the Mamlatdar the power to grant temporary injunction. The conferring of powers of the Civil Court, upon the Tribunal, as constituted under Section 67 (1) of the M.T.A.L. Act of 1948, is of no significance whatsoever, for the purpose of the

question under consideration in the present matter. Even Section 72 of the M.T.A.L. Act of 1948, indicates that the powers as contained in the Code of Civil Procedure are not conferred upon the Mamlatdar while exercising powers under Section 70 of the M.T.A.L. Act of 1948. In fact Section 72 of the M.T.A.L. Act of 1948 specifically states that the Mamlatdar under Section 71 of the M.T.A.L. Act of 1948 shall exercise the same powers as the Mamlatdar's Courts under the M.C. Act, 1906, which does not make any mention of the applicability of the Code of Civil Procedure, 1908 to the proceedings under the M.C. Act, 1906. Thus, reliance upon the provisions of the M.T.A.L. Act of 1948 by the learned Counsel for the respondent nos.1 and 2, in my considered opinion, is clearly misplaced.

18. That takes us to the use of the word "immediate" as occurring in Section 5(1)(b) of the M.C. Act, 1906. The word "immediate" would mean and indicate an action to be taken forthwith or with all haste [see *P. Orr and Sons (P) Ltd.* (supra)]. However, considering the background of the provisions of the M.C. Act, 1906 in which it is used, it will have to be held to be circumscribed by the said provisions, which require a determination

of the rights of the parties vis-a-vis the claim as made in respect of the matters provided in Section 5(1)(a)(b) and 5(2) of the M.C. Act, 1906, which cannot be determined unless an enquiry as contemplated by provisions of the M.C. Act, 1906 has taken place. This is further fortified by the limited time period as indicated in Sections 5 (3), 14(2) of the M.C. Act, 1906.

19. Merely because the Mamlatdar Court is a "Court" that would not mean, that it derives jurisdiction automatically to entertain and decide an application for temporary injunction. Even if it is a Court, the powers of the Court, stem from the provisions under which it is created and not otherwise. When the legislature has consciously refrained from conferring any power of grant of temporary injunction upon the learned Mamlatdar, in respect of matters before it, it cannot be said that merely because it is a Court, it would have those powers more so, when the M.C. Act, 1906 does confer any inherent powers upon the Mamlatdar, as are conferred upon the Court under Section 151 of C.P.C. In this context, the provisions as contained in Gujarat Tenancy and Agricultural Lands Act, 1948 can be considered. The original Section 70 of the Gujarat

Tenancy and Agricultural Lands Act, did not confer any power upon the Mamlatdar to issue temporary injunction. However, by way of an amendment of the year 1973, (Act 5 of 1973) Clause (nb) was inserted in Section 70, whereby power to issue temporary injunction was conferred upon the Mamlatdar. It is, thus, apparent that the power to issue an injunction being a power created by Statute, could not be inferred to have been conferred upon the Mamlatdar merely because the Mamlatdar has been termed as a Court or the proceedings before the Mamlatdar are termed as a suit and the parties referred to as plaintiff and defendant. Even though the Mamlatdar has been conferred with the power akin to what the Civil Court possesses under the Code of Civil Procedure in the matter of decision of suit, the conferment of power to grant temporary injunction even upon the Civil Court under the Code of Civil Procedure is by way of a specific provision as contained in Section 94 and Order XXXIX, Rules 1 and 2 of C.P.C. This is more the reason to hold that the Mamlatdar, is not conferred any power to grant temporary injunction while deciding proceedings under the M.C. Act, 1906. Reliance is rightly placed by Mr. Ukey learned Additional Government Pleader for the respondent nos.5 & 6, on

State of Kerala v. Mathai Verghese, (1986) 4 SCC 746 which holds that when the legislature does not speak so, the court interpreting the relevant provision of law cannot substitute any expression in place of the one existing as the Court can merely interpret the section; it cannot rewrite, recast or redesign the section. In interpreting the provision the exercise undertaken by the court is to make explicit the intention of the legislature which enacted the legislation. It is not for the court to reframe the legislation for the very good reason that the powers to “legislate” have not been conferred on the Court.

20. In *Sanjay s/o Dinkar Kulkarni Vs. Shankarappa s/o Ganappa Pasarakar [Civil Revision Application No.244 of 1975, decided on 7/8/1995]* a learned Single Judge of this Court (*Shimpi, J.*) while considering the powers of the Mamlatdar under Section 5 (2) of the Mamlatdar’s Courts Act by relying upon an earlier unreported judgment in *Sahabrao Ruprao Choudhary Vs. Smt. Indubai w/o Devidas Choudhary and another, 1974 Mh.L.J. Note 71 (Kamat, J.)* and *Jamadar Suleman Bachumiya Vs. Mahavir Mathadin and another, (1963) 4 GLR 131*, has held, that the

Tahsildar under Section 5 (2) of the Mamlatdar's Courts Act, 1906, has no power to grant interim or temporary injunction in proceedings pending before him and such an order would be without jurisdiction.

21. In ***Sahab Rao Rup Rao Choudhary*** (supra), this Court held as under :-

“It was held by the Gujrat High Court that the Rules of the Code of Civil Procedure do not apply to cases for which the special procedure makes no provision and consequently, a Mamlatdar cannot grant an interim injunction in a suit under Section 5 of the Mamlatdars Courts Act.

In the whole of this Act, there is no indication of any intention of the legislature that the Rules of the Code of Civil Procedure should apply to the cases filed under the Mamlatdars' Courts Act, Section 5 (2) of the Mamlatdars' Courts Act does make a specific provision for a permanent injunction, but there is no provision in the Act for an interim or temporary injunction. Agreeing, therefore, with the decision of the Gujrat High Court, I hold that the Mamlatdar acted in excess of his jurisdiction when he issued a temporary or interim injunction in the suit filed by the petitioner under Section 5 of the Mamlatdars' Courts Act.”

(emphasis supplied)

22. In ***Jamadar Suleman Bachumiya*** (supra) while considering the scope of Section 5 of the M.C. Act, 1906, as then applicable to the State of Gujrat it has been held that the Mamlatdar had no jurisdiction to issue an injunction in a suit filed under Section 5 (2) of the Mamlatdar's Courts Act. Though not discussed, the judgments delivered, under the old Mamlatdar's Courts Act, i.e. Bombay Act -III of 1876 were taken note of while recording the arguments of the learned Counsel for the opponent namely ***Ganpatram Jebhai Vs. Ranchhod Haribhai ILR 17 Bom. 645; Kasam Saheb Valad Sha Amed Saheb and another Vs. Marutibin Rambhaji, ILR 13 Bom. 552*** . which hold that the Code of Civil Procedure as extant then, was not applicable to proceedings before the Mamlatdar.

23. ***Lala Dagadu Kale Vs. Additional Commissioner, Nashik and others, 2010 (3) Mh.L.J. 813***, relied upon by Mr. Pathak, learned Counsel for the respondent nos.1 and 2 is the only case, in which a passing reference has been made by the learned Single Judge of this Court that the Mamlatdar while acting under sec.5 of the

Mamlatdar's Act, 1906, will also have the power to grant temporary injunction.

23.1. It is, however, material to note that in ***Lala Dagadu Kale*** (supra), the Court was considering whether the Tahsildar acting under the provisions of the MLR Code, 1966 had jurisdiction to review his own order without seeking permission from his superior officers, as contemplated under Section 258 of the MLR Code, 1966. The order sought to be reviewed, was one which was passed by the Mamlatdar under Section 5 of the M.C. Act, 1906. It is trite that the provisions of the M.C. Act, 1906 and those of the MLR Code, 1966 are separate and distinct and operate in different fields altogether and therefore, the question whether a review of an order passed under Section 5 of the M.C. Act, 1906, would be permissible, without the requirement of Section 258 of the MLR Code, 1966 being followed, in my considered opinion, would be a situation, which is clearly inconceivable in law. It is thus apparent, that the Court in ***Lala Dagadu Kale*** (supra), was not called upon to consider whether the Mamlatdar acting under the provisions of the

M.C. Act, 1906, was empowered to entertain an application for grant of interim relief or temporary injunction.

23.2. A *ratio decidendi* is the reasoning and decision of the Court upon the question referred to the Court for decision [*see Natural Resources Allocation in re (2012) 10 SCC, Shaikh Abdul Razak Yaseen Patel and others Vs. Sayyad Murad Syed Irfan Ali (deceased) through his L.Rs. Smt. Sharifabi w/o Murad Sayed and others, 2020 (2) Mh.L.J. 591*]. In *State of Haryana Vs. Ranbir @ Rana (2006) 5 SCC 167*, while considering the difference between a precedent and obiter, it was held that there was a marked distinction in as much as an obiter is more or less presumably unnecessary to the decision of the matter, whereas a *ratio decidendi*, is what the judgment actually is called upon to decide and decides. In *State of Orissa v. Mohd. Illiyas, (2006) 1 SCC 275* it has been held that according to the well-settled theory of precedents, every decision contains three basic postulates : (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal

problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. In *Director of Settlements A.P. and others Vs. M.R. Apparao and another*, AIR 2002 SC 1598 , it has been held that a judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An “obiter dictum” as distinguished from a *ratio decidendi* is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a binding effect as a precedent, but it cannot be denied that it is of considerable weight.

23.3. It would thus be apparent that the observations in para 6 of the judgment in *Lala Dagadu Kale* (supra), therefore, can safely be said to be a mere obiter and not laying down any law or

binding precedent in that regard, as the learned Single Judge was not called upon to decide the question at all, which was altogether different as indicated above.

24. Once this is so held, in my considered opinion, the power to grant an interim relief in the nature of a temporary injunction being absent, it would be jurisdictionally impermissible, for the learned Mamlatdar or for that matter the revisional authority under Section 23 of the M.C. Act, 1906 to either entertain an application for interim temporary injunction or grant it. In this view of the matter, the order of the Mamlatdar dated 10/6/2021, granting temporary injunction and so also that of the S.D.O. dated 12/7/2021, would clearly be unsustainable in law.

24.1. In *Ashok Devman Gangurde Vs. Daggu Chiman Gangurde, 2021 (2) Mh.L.J. 460*, it has been held, that the principles of Section 11 of the C.P.C. are applicable to proceedings under Section 5 before the Mamlatdar, which in my opinion even if the Code of Civil Procedure is not applicable, have to be so construed on the general principles of law relating to finality of litigation and is of

no assistance to Mr. Pathak, learned Counsel for the respondent nos.1 and 2.

24.2. In *Mohammad Khan s/o Rahim Khan Vs. Shankar s/o Maroti Dhage and another, 2017 (3) Mh.L.J. 135*, it has been held, that the orders passed under Section 5 or under Section 23 of the M.C. Act, 1906 since no finality is attached to them, the jurisdiction of the Civil Court to decide suit challenging such orders was not barred, which has no applicability to the facts of the present matter. In *Vasudev Pandharinath Raikar and others Vs. Manoj Mohan Dalvi and others, 2018 (4) Mh.L.J. 927*, it was held that since the respondent no.1 was not a party to proceedings before the Mamlatdar's Court the question of applying the principles of *res judicata*, as per explanation – VIII to Section 11 of the C.P.C. did not arise, which again is not germane to the matter in issue in hand.

24.3. *Anjali w/o Vitthal Ingole Vs. Sub-Divisional Officer, Washim and another, 2015 (2) Mh.L.J. 651*, merely lays down the parameters of interference in revisional jurisdiction under Section 23

(2) of the M.C. Act, 1906 and therefore is of no assistance, as the question involved here is totally different.

24.4. ***Sadashiv Mahadeo Kumbhar*** (supra) was a case under the Bombay Tenancy and Agricultural Lands Act, 1948, wherein the Mamlatdar acting under Section 70 of the B.T.A.L. Act, 1948 was held to have the power of review of its own order, as the proceedings were held to be parallel to Code of Civil Procedure and in ***Narayan Nagappa Hegde*** (supra), it was held, that the Mamlatdar's Court was a Court subordinate within the meaning of Section 115 of C.P.C. and therefore the High Court had revisional jurisdiction over it and in both the matters, the issue of the Mamlatdar, under the M.C. Act, 1906, having power to grant interim injunction, did not fall for consideration therein.

24.5. Reliance on ***Manohar Lal Chopra*** (supra) by Mr. Pathak, learned Counsel for the respondent nos.1 and 2 is clearly misplaced as therein the Court was considering the issue of grant of injunction by invoking the inherent powers of the Court as contained in

Section 151 of the C.P.C. and therefore was a case in which the Statute specifically conferred a power upon the Court.

25. Further reliance upon Form in Schedule-C of the M.C. Act, 1906, is clearly misplaced, as Form-C merely indicates the proforma in which an injunction granted under Section 5 of the M.C. Act, 1906, is to issue. The Form in Schedule-C is referable to Section 21 (2) of the M.C. Act, 1906, which speaks about the decision having already been taken for granting injunction as contemplated under Section 21 (1) of the M.C. Act, 1906, which is for removal of an impediment or for awarding possession or restoring a use, all of which, relate to the final decision of the Mamlatdar and not otherwise. Even otherwise, a Form given in any Schedule to a Statute, would merely indicate the format in which, the decision is to be entered or the notice is to be given, and can never be construed as something conferring jurisdiction upon a Court or authority.

26. In view of the above discussion, I am of the considered opinion, that the provisions of the M.C. Act, 1906, do not confer any

power upon the Mamlatdar, to issue any interim orders or grant any interim relief by way of temporary injunction, or otherwise, and no such power can be inferred upon or in the Mamlatdar, by having recourse to any other Statute, parallel or otherwise, nor do the provisions of the M.C. Act, 1906, confer any inherent jurisdiction/power upon the Mamlatdar, to do something, which is not otherwise provided in the M.C. Act, 1906.

27. The impugned orders, therefore cannot be sustained in law, as the jurisdiction is lacking and are hereby quashed and set aside. The writ petition is accordingly allowed and the application for grant of temporary injunction, as filed by the respondent no.1, is dismissed as being without jurisdiction. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

Mr. Pathak, learned Counsel for the respondent nos.1 and 2, at this juncture, makes a request that since there is an obstruction to the access complained of by the respondent nos.1 and 2, which obstruction has been caused by the petitioner, due to which they have been unable to use their land, the proceedings

before the Mamlatdar, could be directed to be decided within a time bound schedule, to which neither Mr. Kukday, nor Mr. Hajare nor the learned Additional Government Pleader have any objection, considering which, the learned Mamlatdar is directed to decide the proceedings before him within a period of two months from the date the copy of this order is placed before him. Parties agreed to appear before the Mamlatdar on 11/10/2021.

(AVINASH G. GHAROTE, J.)

rvjalit