

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

25 WRIT PETITION NO.7765 OF 2022
WITH CA/3548/2023 IN WP/7765/2022 WITH CA/3547/2023 IN
WP/7765/2022 WITH CA/3738/2023 IN WP/7765/2022 WITH
CA/10980/2022 IN WP/7765/2022

SANJAY CHANDRABHAN BHUME AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE SUB DIVISIONAL OFFICER
REVENUE AND OTHERS

...
Advocate for Petitioners : Mr. N.K. Chaudhari
AGP for Respondent/State: Mr. K.B. Jadhavar
Advocate for Respondent 3 : Mr. R.B. Dhakane

...
CORAM : ARUN R. PEDNEKER, J.
DATED : 20/03/2023

PER COURT :

1. Heard the learned counsel for the parties.
2. The petitioners are challenging the order passed by the Mamlatdar under section 5 of the Mamlatdars Courts Act and the order passed by the Appellate Authority.
3. However, the petitioners herein also have filed civil suit bearing Regular Civil Suit No. 32/2023, claiming declaration and injunction qua the suit property. As the proceedings under the Mamlatdars Courts Act are summary in nature and never final and are always subject to the orders passed by the Civil Court under section 22 of the Mamlatdars Courts Act and the orders passed by the Civil Court would prevail over any order passed by the Mamlatdar's Court or appellate authority under the Mamlatdar's Courts Act. However, it is clarified that until the civil court passes any order, the order passed by the Mamlatdar, so also the order passed by the appellate authority would remain in existence till the civil court i.e. 2nd Jt. Civil Judge, Junior Division, Phulambri in Regular Civil Suit No. 32/2023 passes any order in the civil suit.
4. After this order was dictated, Mr. R.B. Dhakne, learned counsel for

respondent No. 3 in the second session of the court submitted that only in the event the civil suit is filed prior to the institution of proceeding under section 5 of the Mamlatdar's Courts Act and the order passed by the civil court would have precedence over the order passed by the Mamlatdar and in support of above submission produced the judgment of this court in second session in the case of **Vishwanath s/o. Rambhau Bhalerao and Anr. Vs. Usha w/o. Pralhad Kasbe, 2011 (1) Mh.L.J. 603** by relying upon para 8 of the judgment, which reads as under :-

"8. Shri. Chapalgaonkar, on the other hand, urged that once it was pointed out to the Mamlatdar's Court that the Regular Civil Suit was filed by petitioners, it could not have proceeded with the matter and should have directed the parties to get their rights decided in Civil Court. This contention also cannot be accepted for the reason that bar of jurisdiction of Mamlatdar's Court under Section 26 (b), operates only when it is pointed out that Civil Suit was filed prior to institution of proceedings under Section 5 of the said Act. In the present case, Regular Civil Suit No.108/2008 was filed after institution of proceedings under Section 5 of the Mamlatdars' Courts Act. Hence, it cannot be said that Mamlatdar's Court proceeded without jurisdiction or that it could not have proceeded with the matter, as urged."

5. This submission cannot be accepted and devoid of any substance. The Mamlatdar's order in the instant case is within jurisdiction as there is no prior suit between the parties on the same subject matter. However, the order of Mamlatdar is subject to the orders passed by the civil court in view of section 22 of the Mamlatdar's Courts Act. This Court in the case of **Vishwanath** (*supra*) was interpreting section 26 and not section 22 of the Mamlatdar's Courts Act and the judgment cited *supra* is not applicable in the present case.

6. The writ petition is disposed of. All pending civil applications are disposed of.

[ARUN R. PEDNEKER J.]

ssc/