



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

**WRIT PETITION NO.2400/2025**

Pralhad Mhatarba Zore and Ors. .Vs. Shankar Shamrao Mehetre

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders

Court's or Judge's orders

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Mr. A. J. Thakkar, Advocate for petitioners.

**CORAM : ANIL L. PANSARE, J.**

**DATE : JULY 8, 2025**

Heard.

2. Application filed by petitioners – original defendants under Order VII Rule 11 of the Civil Procedure Code, 1908 has been rejected by the Trial Court on the ground that the party, who is party to the proceeding before the Mamlatdar's Court, can file suit in terms of Section 22 of the Mamlatdar's Courts Act, 1906 (for short the, 'Act of 1906'). According to the Trial Court, which has referred to the judgment of the High Court, the party may approach the Civil Court and obtain relief contrary to the Mamlatdar's decision rendered under Section 5 (2) of the Act of 1906.

3. Thus, what has been held is that a party may obtain relief contrary to the Mamlatdar's decision. The question here is whether the relief sought by the respondents through the plaint was contrary to the Mamlatdar's decision?

4. In the present case, the Mamlatdar has directed the respondent to remove impediment on the approach road to the petitioners' field. The respondent filed suit with a prayer that the decision of Mamlatdar is not binding on him. The question is whether such a prayer can be said to be a relief contrary to the Mamlatdar's decision.

5. Section 22 of the Act of 1906 reads as under:

*“22. Possession to be given without prejudice to rights of parties.— Subject to the provisions of section 23, sub-section (2), the party in favour of whom the Mamlatdar issues an order for removal of an impediment of the party to whom the Mamlatdar gives possession or restores a use, or in whose favour an injunction is granted, shall continue to have the surface water upon his land flow unimpeded on to adjacent land or continue in possession or use, as the case may be, until otherwise decreed or ordered, or until ousted, by a competent Civil Court.*

*Provided, firstly, that nothing in this section shall prevent the party against whom the Mamlatdar’s decision is passed from recovering by a suit in a competent Civil Court mesne profits for the time he has been kept out of possession of any property or out of enjoyment of any use.*

*Provided, secondly, that in any subsequent suit or other proceeding in any Civil Court between the same parties, or other persons claiming under them, the Mamlatdar’s decision respecting the possession of any property or the enjoyment of any use or respecting the title to or valuation of any crop dealt with under the proviso to sub-section (1) of section 21, shall not be held to be conclusive.”*

6. As could be seen, focus is on surface water upon the land and its unimpeded flow onto the adjacent land. Thus, where order/decision passed by Mamlatdar is in context with the surface water and its flow, the party possessing land through which or upon which the surface water exists, can retain possession until otherwise decreed or ordered by Civil Court. First proviso refers to entitlement to recover mesne profit for retaining possession of the property with oneself. Second proviso provides that the decision of Mamlatdar in respect of possession of property or enjoyment of any use or respecting the title to or valuation of any crop dealt with under the proviso to Sub Section (1) of Section 21, shall be not conclusive for subsequent suit.

7. According to the petitioners’ counsel, the relief granted by Mamlatdar will not fall in any of these categories and, therefore, the

suit was barred by law. The petitioners have also challenged the order passed by the Trial Court appointing Commissioner to inspect the disputed portion of land.

8. Issue notice to the respondent, returnable in four weeks.

**(Anil L. Pansare, J.)**

Kahale