



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

WRIT PETITION NO.3241 OF 2025

Mohansingh Panditsingh More and others ... Petitioners

Versus

The Sub Divisional Officer, Malkapur
and others

... Respondents

....

Mr. N.B.Kalwaghe, Advocate for petitioners.

Ms. Kavita H.Bhondge, AGP for respondent nos.1 and 2.

Dr. Renuka S.Sirpurkar, Advocate for respondent nos.3 and 4.

...

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : 20th AUGUST, 2025.

FINAL ORDER :

1 Heard Mr. N.B.Kalwaghe, learned counsel for the petitioners, Ms. Kavita H.Bhondge, learned AGP for the respondent nos.1 and 2 and Dr. Renuka S.Sirpurkar, learned counsel for the respondent nos.3 and 4.

2. The petitioners take exception to the order dated 18.06.2025 passed by the respondent no.1- Sub Divisional Officer, Malkapur, thereby vacating the stay granted earlier and also rejecting the application for interim stay to the order passed by the Mamlatdar.

3. The respondent nos.3 and 4 had filed an application dated 27.12.2024 under Section 5 of the Mamlatdar's Courts Act against the petitioners seeking a right of way through the land belonging to the petitioners. In this application, the respondents also mentioned certain details about the requirement of way through the land belonging to the petitioners and also mentioned a list of witnesses to be examined in support of their case. On 17.01.2025, the petitioners appeared in the proceedings and filed their reply and opposed the claim of the respondent nos.3 and 4. On 04.04.2024 spot inspection was conducted by the Circle Officer and thereafter on 16.04.2025 the respondent no.2 Mamlatdar passed order and allowed the application filed by the respondent nos.3 and 4.

4. Feeling aggrieved by the order of the Mamlatdar, the petitioners filed Revision Application before the respondent no.1 on 09.06.2025. The petitioners also filed a separate application for grant of stay to the execution of order dated 16.04.2025 and pointed out that the impugned order passed by the Mamlatdar by relying upon the spot inspection report, required to be stayed during the pendency of the Revision Application. In view of the contentions canvassed by the petitioners, the respondent no.1 passed an interim order and granted status quo to be maintained

by the parties. The respondent nos.3 and 4 thereafter appeared in the proceedings and filed an application for vacation of the order of status quo by contending that they had earlier filed a Caveat and the order of status quo was granted by ignoring the Caveat and, therefore, the order of status quo be vacated. This application was filed on 18.06.2025 and on the same day, the respondent no.1-Sub Divisional Officer passed the order by which the application for stay came to be rejected. The petitioners have challenged this order by way of instant writ petition.

5. Mr. Kalwaghe, learned counsel for the petitioners, submitted that the impugned order passed by the Sub Divisional Officer is unreasoned and cryptic. He submitted that it was demonstrated before the Sub Divisional Officer that the order passed by the Mamlatdar based on the spot inspection report was unsustainable and considering the vital aspects of the matter, the order of status quo was granted, which was to operate during pendency of the Revision Application. However, only because the respondents appeared and insisted for vacation of status quo, the Sub Divisional Officer straightway vacated the status quo. He, therefore, submitted that since the Revision Application filed by the petitioners raising several grounds is required to be considered on merits, the vacation of status quo order was unwarranted. The

application filed by the respondents under Section 5 of the Mamlatdar's Courts Act was required to be decided after affording an opportunity of cross-examination to the petitioners, particularly in view of the fact that the respondents had specifically mentioned the names of the witnesses, who were to be examined. He also submitted that the respondents had not placed any material to establish that there existed any right of way from the land belonging to the petitioner and the challenge to the impugned order passed by the Mamlatdar was required to be decided on merits. He, therefore, submitted that the order vacating the status quo and rejecting the stay application is arbitrary and unsustainable in law.

6. In support of his submissions, he relied upon the judgments of the coordinate Bench of this Court in the matter of ***Sudhir Yashwant Dhangade Vs. Ankush Kashiram Bole and others*** (Writ Petition No.5896 of 2018) decided on 3rd January, 2019 and ***Bhaurao s/o Supda Namge Vs Mahesh s/o Padmakar Namge and ors.*** (Writ Petition No.576/2023) decided on 14th October, 2024.

7. As against this, Dr. Renuka Sirpurkar, learned counsel for the respondent nos.3 and 4, strongly opposed the writ petition. She submitted that the petitioners had failed to demonstrate any illegality with the order passed by the Mamlatdar and the order of

status quo was passed by the Sub Divisional Officer only because the Revision Application was filed. She submitted that the Mamlatdar had passed the order by considering all the relevant documents including the spot inspection report and no case was made out by the petitioners seeking stay to the order passed by the Mamlatdar. By adverting attention of this Court to various provisions of the Mamlatdar's Courts Act, particularly Sections 5, 7, 8 and 9 of the Act, she submitted that the proceedings before the Mamlatdar are required to be decided in a summary manner without adopting any hyper technical approach. She, therefore, submitted that the order passed by the Mamlatdar required no interference much less any kind of interim stay. She also submitted that the applicants before the Mamlatdar are entitled to prove their case on the strength of documents and if they desire, by examining witnesses in support of their case. Therefore, non-examination of any witnesses cannot be held to be fatal to their case. She, therefore, strongly opposed the writ petition and submitted that the stay application is rightly rejected by the impugned order.

8. It is pertinent to note that the impugned order is an order passed by the Sub Divisional Officer vacating the order of status quo and rejecting the application for stay. The Sub

Divisional Officer had earlier passed the order of status quo, which was to operate during the pendency of the Revision Application. On the application filed by the respondents seeking vacation of stay, the Sub Divisional Officer passed the impugned order on the same day and rejected the interim application by only observing that the oral arguments of the parties were heard and the order passed by the Mamlatdar was considered. However, there are no reasons mentioned in the impugned order necessitating vacation of the interim order during the pendency of the Revision Application.

9. It has to be seen that the proceedings initiated before the Mamlatdar are required to be decided in accordance with the provisions of the Mamlatdar's Courts Act. In view of the position of law as laid down by the coordinate Bench of this Court in the matter of Sudhir Yashwant Dhangade (referred supra), it is clear that the Act confers powers on Mamlatdar to record evidence. The proceedings before the Mamlatdar are, therefore, required to be decided on the basis of documentary evidence made available and also evidence of parties, if the witnesses are examined. As such the contentions of the petitioners that for arriving at any final conclusions, the Mamlatdar was required to consider all the aspects including the spot inspection report. As such, the

contentions raised by the petitioners in the Revision Application are required to be decided on merits. In view of the grounds raised by the petitioners before the Revisional Authority, it is desirable that the parties be directed to maintain status quo which was ordered by the Sub Divisional Officer. On consideration of all these aspects, it is clear that the impugned order vacating the order of status quo and rejecting the stay application is unwarranted.

10. Having regard to the above mentioned factual and legal aspects and particularly, considering the fact that the Revision Application is pending before the Sub Divisional Officer, it is in the interest of justice to direct the parties to maintain status quo during the pendency of the Revision Application. The Sub Divisional Officer is, therefore, directed to decide the Revision Application within a period of one month from today by affording an opportunity of hearing to both the parties.

11. In view of the aforesaid discussion, the writ petition is accordingly disposed of. There shall be no order as to costs.

(PRAFULLA S.KHUBALKAR, J.)

Mukund Ambulkar, SPS