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

WRIT PETITION NO.1913/2026

Shri Madhav Maroti Bittewar and others
...Versus...
Sub Divisional Officer, Umarkhed, Tahsil : Umarkhed, Dist : Yavatmal and others

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

Mr. Manoj Kumar Mishra, Advocate for petitioners
Mrs. Swati Kolhe, AGP for respondent Nos.1 and 2
Mr. H.V. Dhage, Advocate for respondent No.3

CORAM : ROHIT W. JOSHI, J.
DATE : 12/06/2026

1. The present petition takes exception to the order dated 13/01/2026, passed by the Sub Divisional Office, Umarkhed in Revision Case No.07/MCA-5/2024-2025 of village Widul Khand-1, Tq. Umarkhed, whereby the Sub Divisional Officer has confirmed the order dated 13/03/2025, passed by the Naib Tahsildar (Revenue)/Mamlatdar, Umarkhed in Revenue Case No.02/MCA-5/2024-25 of village Widul Khand-1, Tq. Umarkhed.

2. The petitioners are the defendants in the proceeding before the Naib Tahsildar. The proceeding was filed under Section 5 of the Mamlatdars' Courts Act, 1906. The respondent No.3 has purchased an agricultural land, which is the suit property, from one Pooja Digambar Bittewar. The petitioner Nos.1 and 3 have filed a suit being Special Civil Suit No.22/2024, seeking right of preemption by questioning the sale-deed executed in favour of the respondent No.3. In the

said suit, the petitioner Nos.1 and 3 have raised a contention that they are in possession of the suit property and have prayed for injunction, restraining the defendants from disturbing their possession over the suit property. The respondent No.3, who has filed suit before the Naib Tahsildar/Mamlatdar is arrayed as defendant No.2 in the said civil suit.

3. The learned Mamlatdar has allowed the application, filed by the respondent No.3 vide order dated 13/03/2025 by granting an injunction against the petitioners, restraining them from creating any hindrance in harvesting of the crops by respondent No.3. The said order is confirmed by the learned Sub Divisional Officer. It will be pertinent to state that initially the Sub Divisional Officer had allowed the revision application due to some confusion in referring to the parties. However, subsequently the said mistake was corrected and the revision application came to be dismissed vide order dated 13/01/2026.

4. Although a contention is raised that the Sub Divisional Officer ought not to have reversed the order passed in favour of the petitioners without notice to them, it appears that he has corrected the clerical error in the order and has reversed the operative portion without disturbing the reasons recorded.

5. The learned Advocate for the petitioners submits that since a civil suit with respect to the suit property was pending as on the date of filing of proceeding before the Mamlatdar, the proceeding before the Mamlatdar was not maintainable, in view of Section 26 (b) of the Mamlatdars'

Courts Act. Reliance is placed on the judgment of this Court in the case of ***Vishwanath s/o Rambhaji Bhalerao and another Vs. Usha w/o Pralhad Kasbe***, reported in ***2011 (1) Mh.L.J. 603*** in support of this contention.

6. The civil suit is filed on 22/12/2024. Proceeding before the learned Mamlatdar is filed on 28/01/2025. The proceeding before the Mamlatdar is not maintainable, in view of Section 26 (b) of the Mamlatdars' Courts Act. Perusal of the civil suit will demonstrate that apart from preemption, there is a prayer for perpetual injunction against the defendants in the said suit, who are the respondent No.3 in the present petition and his vendor. Perusal of Section 26(b) of the Mamlatdars' Courts Act will demonstrate that a proceeding before Mamlatdar is barred when relief claimed before the Mamlatdar forms subject matter of a suit pending before the Civil Court. It is not necessary that the applicant/plaintiff before the Mamlatdar should have filed the earlier suit before the learned Civil Court. In view of the clear mandate of Section 26(b) of the Mamlatdars' Courts Act and the judgment in the case of ***Vishwanath*** (supra), it needs to be held that the subsequent proceeding before the learned Mamlatdar filed by the respondent No.3 was not maintainable.

7. In view of the aforesaid, the order dated 13/03/2025, passed by the learned Mamlatdar, as also the order dated 13/01/2026, passed by the learned Sub Divisional Officer will have to be quashed and set aside. Writ Petition therefore, is allowed by quashing and setting aside the order dated 13/03/2025, passed by the Naib Tahsildar (Revenue)/Mamlatdar, Umarkhed in Revenue Case

No.02/MCA-5/2024-25 of village Widul Khand-1, Tq. Umarkhed and the order dated 13/01/2026, passed by the Sub Divisional Office, Umarkhed in Revision Case No.07/MCA-5/2024-2025 of village Widul Khand-1, Tq. Umarkhed.

8. It will however be pertinent to state that the respondent No.3 has purchased the suit property from the defendant No.1 in the aforesaid civil suit. The title of defendant No.1 is not questioned by the petitioners. The title is rather admitted inasmuch as right of preemption is sought to be enforced against the defendant No.1, vendor of the present respondent No.3. There is no order of temporary injunction passed in favour of the petitioners in the pending civil suit. Therefore, *prima facie* possession of the respondent No.3 over the suit property, as is recorded by the learned Mamltdar will have to be accepted.

9. In that view of the matter, this Court is inclined to continue the order of injunction dated 13/03/2025, passed by the learned Naib Tahsildar (Revenue)/Mamaltdar in Revenue Case No.02/MCA-5/2024-25 of village Widul Khand-1, Tq. Umarkhed till 15/08/2026. The respondent No.3 will be at liberty to take recourse to appropriate proceedings for protection of his interest, in accordance with law.

10. No order as to costs.

(ROHIT W. JOSHI, J.)

Wadkar

Signed by: S.S. Wadkar (SSW)
Designation: PS To Honourable Judge
Date: 15/06/2026 14:50:42