



ORDER PASSED BELOW EXH.44
IN REGULAR CIVIL SUIT NO.193/2025

[CNR No.MHKO090006032025]

Defendant no.3 has preferred the present application under Order VII Rule 11(a) and (d) CPC seeking rejection of the plaint on the grounds that (i) the plaint does not disclose any cause of action, and (ii) the suit is barred by law.

In short, the contention of defendant no.3 is as under :-

2. Defendant no.3 has contended that the plaint neither discloses any cause of action nor is it maintainable in law, and that the suit is expressly and impliedly barred by statutory provisions.

3. It is the specific case of defendant no.3 that the plaintiffs have not pleaded any infringement of a legally enforceable civil right in respect of the suit land. It is contended that the plaint does not disclose any cause of action as required under Order VII Rule 11(a) of the Code of Civil Procedure, since the plaintiffs do not claim title, possession, easement, or any other personal or proprietary right over the suit land. According to defendant no.3, the grievance raised in the plaint pertains exclusively to alleged encroachment upon Government land, which constitutes a matter of public law and administrative control, and not a private civil dispute.

4. Defendant no.3 has further contended that the suit

land is admittedly Government land, alleged to be Gairan land, and that all questions relating to its use, protection, and alleged encroachment are governed by the Maharashtra Land Revenue Code, 1966. It is submitted that under Sections 20, 22-A, 23, 50, 51 and 53 of the Maharashtra Land Revenue Code, the Collector and revenue authorities are vested with exclusive jurisdiction to deal with encroachments upon Government land, including eviction, removal of unauthorised structures, and regularisation where permissible.

5. It is further contended that the jurisdiction of the Civil Court is barred under the Maharashtra Revenue Jurisdiction Act, 1876, which restricts the jurisdiction of Civil Courts in respect of matters which the revenue authorities are empowered to determine under the revenue laws. defendant no.3 has submitted that the reliefs sought in the plaint are, in substance, identical to the statutory powers conferred upon the Collector, and therefore the suit is barred by law within the meaning of Order VII Rule 11(d) of the Code of Civil Procedure.

6. Defendant no.3 has also contended that the plaintiffs have already approached the competent revenue authority by filing proceedings before the District Collector in respect of the same alleged encroachment. On this ground, it is submitted that the present suit is hit by the bar of res sub judice under Section 10 of the Code of Civil Procedure and that the institution of parallel proceedings amounts to forum shopping and abuse of the process

of law.

7. It is further contended that the issue of encroachment upon Gairan land has been the subject matter of adjudication before the Hon'ble High Court in Suo Motu Public Interest Litigation No.2 of 2022, wherein directions were issued for identification and removal of encroachments by the jurisdictional Collector. Defendant no.3 has submitted that the present suit, filed in a representative capacity, is barred by the principles of res judicata under Section 11 of the Code of Civil Procedure read with Explanation VI, as the plaintiffs claim to espouse a public right already considered by the Hon'ble High Court.

8. Defendant no.3 has further contended that the plaintiffs lack locus standi to maintain the present suit, as they have no personal or proprietary interest in the suit land. It is submitted that the suit has been styled as a representative suit without strict compliance of Order I Rule 8 of the Code of Civil Procedure, and that such non-compliance renders the suit not maintainable.

9. It is also contended that the reliefs sought in the plaint are barred under Section 41(h) of the Specific Relief Act, 1963, as an equally efficacious statutory remedy is available before the Collector under the Maharashtra Land Revenue Code. Defendant no.3 has submitted that entertaining the present suit would result in conflicting decisions, particularly in view of the

statutory power of the Collector to regularise land under Section 51 of the Maharashtra Land Revenue Code.

10. On all these grounds, defendant no.3 has prayed that the plaint be rejected under Order VII Rule 11(a) and (d) of the Code of Civil Procedure.

In short, the contention of plaintiffs is as under :-

11. The plaintiffs have instituted the present suit in a representative capacity, claiming to be residents and villagers of the concerned village. It is their case that the suit land bearing Gat No.544-A is Government Gairan land reserved for common use of villagers and vests in the State Government.

12. According to the plaintiffs, defendant no.3 has started illegal and unauthorised construction upon the said Gairan land, without any permission or authority of law. It is contended that such construction amounts to encroachment upon public property and adversely affects the rights and amenities of villagers at large.

13. The plaintiffs have further contended that defendant no.2, being the local authority and custodian of the said land, has failed to take effective steps to prevent the alleged encroachment and illegal construction. It is the case of the plaintiffs that repeated representations made to the authorities did not yield any result, compelling them to approach the Civil Court.

14. The plaintiffs assert that the cause of action for filing the suit arose when defendant no.3 commenced unauthorised construction on the suit land and continues to subsist as the alleged encroachment is a continuing wrong. On these averments, the plaintiffs have sought a decree of permanent injunction restraining defendant no.3 from carrying out further construction on the suit land and a decree of mandatory injunction directing removal of the alleged encroachment and restoration of the land to its original condition.

15. The plaintiffs have opposed the application filed by defendant no.3 under Order VII Rule 11 of the Code of Civil Procedure. It is their contention that the plaint discloses a clear cause of action and that the suit is not barred by any provision of law. The plaintiffs contend that the jurisdiction of the Civil Court is not expressly or impliedly barred and that the reliefs sought are civil in nature and within the competence of the Civil Court.

16. It is further contended by the plaintiffs that the provisions of the Maharashtra Land Revenue Code and the Maharashtra Revenue Jurisdiction Act do not oust the jurisdiction of the Civil Court to grant reliefs of permanent and mandatory injunction. The plaintiffs have denied that the suit is barred by Sections 10 or 11 of the Code of Civil Procedure and have contended that the order passed by the Hon'ble High Court in Suo Motu Public Interest Litigation No.2 of 2022 does not operate as res judicata nor does it prohibit institution of the present suit.

17. On these grounds, the plaintiffs have prayed for dismissal of the application under Order VII Rule 11 of the Code of Civil Procedure and for adjudication of the suit on merits.

18. I have heard the learned Advocate for the plaintiffs and the learned Advocate for the defendants. I have carefully perused the plaint, the application under Order VII Rule 11 of the Code of Civil Procedure, the reply filed thereto, the documents placed on record, and the written arguments submitted by both the sides.

19. Upon consideration of the application and the reply, the following points arise for my determination, to which I have recorded my findings for the reasons stated hereinafter :-

Sr. No.	Points	Findings
1]	Whether the plaint discloses a cause of action as required under Order VII Rule 11(a) of the Code of Civil Procedure ?	In the affirmative.
2]	Whether the suit is barred by law and the plaint is liable to be rejected under Order VII Rule 11(d) of the Code of Civil Procedure ?	In the negative.
3]	What Order ?	As per final Order.

20. Ld. Advocate for the defendant no.3 has relied upon

following case-laws in support of its pleading :-

- i] *Kehar Singh Nihal Singh V/s. Custodian General, Evacuee Property -- AIR 1959 P & H 58 ;*
- ii] *M/s. Patil Automation Pvt. Ltd. V/s. Rakheja Engineers Pvt. Ltd. -- (2022) 10 SCC 1 ;*
- iii] *Babamiya Ahmed Shah Inamdar V/s. Taha Beed -- 2002 (5) BomCR 619 ;*
- iv] *Jagpal Singh & Ors. V/s. State of Punjab & Ors. -- (2011) 11 SCC 396 ;*
- v] *Vinod Infra Developers Ltd. V/s. Mahaveer Lunia & Ors. -- Hon'ble Supreme Court of India, Civil Appeal No.7109/2025, decided on 23.05.2025 ;*
- vi] *H. S. Deekshit & Anr. V/s. M/s. Metropoli Overseas Ltd. & Ors. -- 2022 LiveLaw (SC) 703 ;*
- vii] *Dhulabhai & Ors. V/s. The State of Madhya Pradesh & Ors. -- AIR 1969 SC 78 ;*
- viii] *Village Panchayat V/s. Wasudeo Ramchandrajji Mohod -- 2014 (4) All MR 717 ;*
- ix] *Ashok Rajaram Patil V/s. The State of Maharashtra -- Hon'ble Bombay High Court Bench at Aurangabad, Writ Petition No.12039 of 2022, decided on 01.12.2022 ;*
- x] *Dhruv Green Field Ltd. V/s. Hukam Singh & Ors. -- AIR 2002 SC 2841 ;*

21. Ld. Advocate for plaintiffs has relied upon following case-laws in support of its pleading :-

- i] *Damodar Dnyandeorao Sarap V/s. Haribhau Govindrao Pakdane -- 2018 (3) Mh.L.J. 179 ;*

- ii] *Hari Ram V/s. Jyoti Prasad & Anr. -- (2011) 2 SCC 682 ;*

REASONS

As to point no.1 :-

22. It is a settled position of law that while deciding an application under Order VII Rule 11(a) of the Code of Civil Procedure, the Court is required to examine only the averments made in the plaint and the documents relied upon by the plaintiff, and to proceed on the assumption that such averments are correct. The defence raised by the defendants or disputed questions of fact cannot be considered at this stage.

23. On a plain and meaningful reading of the plaint, it is seen that the plaintiffs have pleaded that the suit land is Government Gairan land meant for common use of villagers, that defendant no.3 has started unauthorised and illegal construction thereon, and that despite complaints, the concerned authorities have failed to prevent such encroachment. The plaintiffs have further pleaded that such alleged encroachment affects public rights and amenities of villagers and constitutes a continuing wrong. On these averments, the plaintiffs have sought reliefs of permanent and mandatory injunction.

24. Though defendant no.3 has contended that the plaintiffs have not pleaded any personal or proprietary right, it is well settled that for the purpose of Order VII Rule 11(a), the Court

is not required to examine the strength or enforceability of the right claimed, but only whether the plaint discloses a bundle of facts which, if proved, would entitle the plaintiffs to relief. Alleged illegal encroachment on public land is pleaded as a continuing wrong, and the reliefs sought are consequential thereto.

25. The Hon'ble Supreme Court in *Hari Ram (cited supra)* has held that encroachment on public land gives rise to a continuing cause of action and that affected persons are entitled to seek removal of such encroachment. At this stage, it cannot be said that the plaint is bereft of cause of action. Accordingly, this point is answered in the affirmative, holding that the plaint discloses a cause of action.

As to point no.2 :-

26. Order VII Rule 11(d) of the Code of Civil Procedure is attracted only where, from the statements contained in the plaint itself, the suit appears to be barred by any law. The bar must be apparent on the face of the plaint and should not depend upon determination of disputed questions of fact or consideration of the defence. The scope of inquiry under this provision is confined strictly to the averments made in the plaint, which are required to be assumed to be true at this stage.

27. Defendant no.3 has raised multiple objections/ grounds contending that the suit is barred by law and that this

Court lacks jurisdiction, and on that basis has sought rejection of the plaint under Order VII Rule 11(d) CPC. Each of the grounds raised by defendant no.3 has been examined independently.

Ground A – Jurisdiction of Civil Court and Alleged Bar under MLRC :-

28. Defendant no.3 has urged that the present suit is barred under Section 9 CPC, as the grievance relates to encroachment on Government Gairan land, which is fully governed by the Maharashtra Land Revenue Code, 1966 (MLRC). It is contended that Sections 20, 22A, 50, 51 and 53 of the MLRC vest exclusive powers in the Collector to prohibit construction, remove encroachments, summarily evict unauthorised occupants, or regularise structures. It is further contended that Section 4(f) of the Maharashtra Revenue Jurisdiction Act, 1876 expressly bars civil court jurisdiction in respect of claims relating to occupation of Government waste land. On this basis, defendant no.3 submits that the suit is impliedly barred and the plaint deserves rejection under Order VII Rule 11(d).

29. Section 9 CPC provides that Civil Courts shall have jurisdiction to try all suits of civil nature except those which are expressly or impliedly barred. The exclusion of jurisdiction is not to be readily inferred. The burden lies on the defendant to demonstrate that the bar is apparent on the face of the plaint. Unless the statute expressly bars civil suits or provides a complete and efficacious remedy, civil jurisdiction remains intact.

30. The Hon'ble Supreme Court in the case of *Dhulabhai (cited supra)* laid down guiding principles regarding exclusion of civil court jurisdiction :-

- [a] Where a statute gives finality to orders of special tribunals and provides adequate remedies, civil jurisdiction is excluded.
- [b] Where there is express bar, civil jurisdiction is excluded.
- [c] Where there is no express bar, exclusion must be inferred only if the statute creates special rights and provides complete machinery for redressal.
- [d] Even where jurisdiction is excluded, civil courts may examine whether provisions of the statute have been complied with or whether the action is ultra vires.
- [e] Exclusion of jurisdiction is not readily inferred; civil courts retain jurisdiction unless the statute provides adequate and efficacious remedies.

31. **Application of *Dhulabhai* Principles**

[a] **Express Bar:** Neither MLRC nor the 1876 Act expressly bars suits for injunction against illegal construction. Section 4(f) of the 1876 Act bars suits claiming occupation rights in Government waste land, but the present suit does not seek declaration of occupation; it seeks preventive and mandatory

injunction against unauthorised construction.

[b] **Adequate Remedy:** The Collector under MLRC can remove or regularise encroachments, but he cannot grant civil remedies of perpetual or mandatory injunction under the Specific Relief Act. The remedies before the Collector are administrative, not judicial. They are not adequate or efficacious substitutes for civil remedies.

[c] **Civil Nature of Reliefs:** The reliefs sought is of permanent injunction restraining construction and mandatory injunction directing removal are civil in nature, governed by Sections 36, 38 and 39 of the Specific Relief Act. Such reliefs lie exclusively within the jurisdiction of Civil Courts.

[d] **Coexistence of Jurisdiction:** The Collector's administrative powers and the Civil Court's judicial powers operate in distinct spheres. The Collector may act to protect Government land administratively, but the Civil Court may adjudicate disputes and grant injunctions where civil rights are threatened. The two jurisdictions coexist and do not exclude each other.

32. Judicial Precedents in *Dhulabhai (cited supra)*, the Supreme Court held that civil jurisdiction is not excluded unless adequate remedies are provided. The Bombay High Court in *Damodar (cited supra)* held that public authorities cannot grant

injunctions, which lie exclusively within the jurisdiction of Civil Courts.

33. Applying the ratio of *Dhulabhai*, it is clear that the jurisdiction of the Civil Court is not excluded in the present case. The Collector's power to remove encroachments does not amount to a jurisdictional bar against the Civil Court. The statutory remedy is not adequate or efficacious to substitute civil remedies of injunction. The plaint seeks civil reliefs which are within the exclusive domain of Civil Courts. Therefore, the contention of defendant no.3 that the suit is barred by law on account of the Collector's powers is unsustainable.

Ground B – Bar of Res Sub Judice (Section 10 CPC)

34. Defendant no.3 contends that the plaint itself discloses that the plaintiffs have earlier approached the District Collector, Kolhapur, by filing a complaint dated 30.09.2025 in respect of the same alleged encroachment. It is argued that the subject matter and issues involved in the present suit are directly and substantially the same as those pending before the Collector, who is stated to be a competent authority under Sections 50 and 53 of the Maharashtra Land Revenue Code to order removal of encroachment. On this premise, defendant no.3 submits that the present suit is barred by Section 10 of the Code of Civil Procedure, amounts to parallel proceedings and forum shopping, and therefore deserves rejection.

35. Section 10 of the Code of Civil Procedure mandates stay of trial of a suit only when the matter in issue is directly and substantially in issue in a *previously instituted suit* pending between the same parties before a *Court competent to grant the relief claimed*. The provision is attracted only when all the statutory ingredients are cumulatively satisfied. The pendency must be of a civil suit before a Court, and not of any other form of proceeding.

36. On a careful reading of the plaint, it is evident that the proceedings initiated before the District Collector are in the nature of a complaint under the Maharashtra Land Revenue Code. Such proceedings are administrative or quasi-judicial in character and cannot be equated with a “suit” as contemplated under Section 10 CPC. The District Collector, though vested with statutory powers to remove encroachments on Government land, is not a Civil Court and does not exercise jurisdiction to grant civil remedies such as permanent or mandatory injunctions as sought in the present suit.

37. Section 10 CPC is attracted only where the previously instituted proceeding is a civil suit pending before a Court competent to grant the reliefs claimed in the subsequent suit. The remedy before the Collector is independent and distinct, operating in a different field, and the pendency of such proceedings does not attract the bar of *res sub judice*. Thus proceedings before administrative or statutory authorities do not fall within the ambit

of Section 10 CPC.

38. In view of the above discussion, the complaint filed before the District Collector cannot be treated as a previously instituted suit within the meaning of Section 10 CPC. The essential ingredients of Section 10 CPC are not satisfied. Consequently, the bar of res sub judice is not attracted. The contention raised by defendant no.3 in this regard is therefore devoid of merit and is rejected.

Ground C – Bar of Res Judicata (Section 11 CPC)

39. Defendant no.3 contends that the issue of encroachment on Government Gairan lands was the subject matter of Suo Motu Public Interest Litigation No.2 of 2022 along with PIL No.127 of 2022 decided by the Hon'ble Bombay High Court by judgment dated 08.08.2025. It is submitted that the High Court issued directions that identification, survey, and removal of encroachments on Gairan lands shall be undertaken only by the jurisdictional Collector. According to defendant no.3, the present representative suit filed by villagers is barred by the principle of res judicata under Section 11 CPC read with Explanation VI, as the plaintiffs are deemed to be represented in the said PIL proceedings. It is argued that entertaining the present suit would amount to indirectly nullifying or bypassing the binding directions of the High Court, which is a Court of Record under Article 215 of the Constitution of India.

40. Section 11 CPC embodies the doctrine of res judicata, which bars a subsequent suit where the matter directly and substantially in issue has been directly and substantially decided in a former suit between the same parties or between parties litigating under the same title by a court of competent jurisdiction. Explanation VI extends the application of res judicata to representative litigation, including public interest proceedings, where persons litigate bona fide in respect of a public right. However, for the bar of res judicata to apply, the following essential conditions must coexist :-

- [i] There must be a former proceeding decided by a competent court;
- [ii] The matter directly and substantially in issue must be identical;
- [iii] The decision must be a final adjudication on merits;
- [iv] The parties must be the same or deemed to be litigating under the same title.

41. The Suo Motu PIL No.2 of 2022 and connected PIL No.127 of 2022 were proceedings in the nature of public interest litigation concerning the issue of large-scale encroachments on Gairan lands across the State of Maharashtra. The Hon'ble High Court, while disposing of the said PILs, issued general and administrative directions to the State machinery and Collectors for identification, survey, and removal of encroachments in

accordance with law.

42. A careful reading of the judgment shows that the Hon'ble High Court did not adjudicate any individual or specific dispute relating to a particular Gat number, village, or alleged encroacher, nor were civil rights of individual villagers or alleged encroachers finally determined. The directions issued were supervisory and administrative in nature, intended to ensure uniform enforcement of statutory duties by revenue authorities.

43. The present suit, on the other hand, is founded upon specific pleadings alleging illegal and unauthorised construction by defendant no.3 on Gat No.544-A situated at Gadhinglaj, coupled with alleged inaction on the part of the Gram Panchayat. The reliefs claimed are civil remedies of permanent and mandatory injunction based on asserted facts peculiar to the suit property. Thus, the matter directly and substantially in issue in the present suit was neither directly nor substantially adjudicated in the earlier PIL proceedings. The factual foundation, nature of relief, and scope of adjudication are materially distinct. Further, it has been consistently held that the plea of res judicata cannot ordinarily be decided at the stage of Order VII Rule 11 CPC unless the bar is apparent on the face of the plaint itself and does not require examination of facts beyond the plaint.

44. In the present case, the bar of res judicata is neither apparent nor self-evident from the averments in the plaint. The

judgment of the Hon'ble Bombay High Court in Suo Motu PIL No.2 of 2022 did not finally adjudicate the specific dispute raised herein, nor did it determine the civil rights now sought to be enforced. The directions issued therein operate in a different field and do not expressly or impliedly bar institution of a civil suit seeking injunction on specific facts.

45. Accordingly, the contention of defendant no.3 that the present suit is barred by Section 11 CPC read with Explanation VI is misconceived and cannot be accepted at the stage of Order VII Rule 11 CPC.

Ground D – Alleged Conflict of Jurisdiction

46. Defendant no.3 contends that entertaining the present suit would result in a conflict of jurisdiction between the Civil Court and the revenue authorities. It is argued that under Section 51 of the Maharashtra Land Revenue Code, 1966, the Collector is vested with discretion to regularise encroachments on Government land, whereas the Civil Court, by granting a decree of mandatory injunction, may direct removal of the alleged encroachment. According to defendant no.3, simultaneous exercise of such powers may lead to contradictory outcomes and render any order passed by the Civil Court coram non iudice. On this premise, defendant no.3 seeks rejection of the plaint at the threshold.

47. The jurisdiction of Civil Courts under Section 9 of the

Code of Civil Procedure is plenary in respect of all suits of civil nature, except where such jurisdiction is expressly or impliedly barred. The mere possibility of overlapping or parallel jurisdiction with a statutory authority does not, by itself, operate as an implied bar. Exclusion of civil jurisdiction cannot be inferred on apprehension of conflicting decisions but must be founded upon a clear legislative intent.

48. Administrative authorities constituted under special statutes exercise powers in aid of governance and enforcement, whereas Civil Courts adjudicate civil rights and grant judicial remedies. The two jurisdictions are distinct and capable of coexisting.

49. A conjoint reading of Sections 50, 51 and 53 of the Maharashtra Land Revenue Code shows that :-

- Section 50 empowers the Collector to prohibit unauthorised occupation and construction;
- Section 53 provides for summary eviction of unauthorised occupants of Government land; and
- Section 51 confers discretion upon the Collector to regularise certain encroachments in accordance with statutory policy.

These powers are essentially administrative and regulatory in nature, exercised for management and control of

Government land. The Collector does not adjudicate civil disputes nor grant judicial remedies such as permanent or mandatory injunctions.

50. Civil Courts exercise judicial powers to adjudicate disputes of civil nature and grant reliefs contemplated under the Specific Relief Act, 1963. Reliefs of permanent and mandatory injunction under Sections 38 and 39 are judicial remedies, granted upon evaluation of pleadings, evidence, and legal rights. Such remedies are enforceable by decree and are not dependent upon administrative discretion.

51. In *Dhulabhai (cited supra)*, the Hon'ble Supreme Court held that exclusion of civil court jurisdiction is not to be readily inferred and that where a statute does not provide an adequate and efficacious remedy for enforcement of civil rights, the civil court's jurisdiction remains intact. The Hon'ble Bombay High Court in *Damodar (cited supra)* has categorically held that public authorities cannot grant reliefs in the nature of permanent or mandatory injunctions, which lie exclusively within the domain of Civil Courts.

52. The discretion vested in the Collector under Section 51 of the MLRC operates in the administrative field, whereas the power of the Civil Court to grant injunction operates in the judicial field. The existence of administrative discretion to regularise an encroachment does not impliedly bar the Civil Court

from examining whether, on the pleadings, the plaintiffs are entitled to civil reliefs.

53. The apprehension of possible inconsistency between administrative action and judicial determination is speculative. Such apprehension cannot form the basis for rejection of a plaint under Order VII Rule 11 CPC. Any practical difficulty arising from concurrent proceedings can be addressed at an appropriate stage in accordance with law, but it does not render the suit non-maintainable at inception.

54. The contention of defendant no.3 that entertaining the present suit would result in a conflict of jurisdiction is based on conjecture and does not disclose any express or implied statutory bar. The Civil Court's jurisdiction to adjudicate civil disputes and grant injunctions is not ousted merely because the Collector is vested with administrative powers under the MLRC. The two jurisdictions operate in distinct spheres and are capable of harmonious coexistence. Consequently, the objection raised by defendant no.3 on the ground of alleged conflict of jurisdiction is misconceived and is hereby rejected.

Ground E – Section 41(h) of the Specific Relief Act, 1963

55. Defendant no.3 contends that the present suit is barred under Section 41(h) of the Specific Relief Act, 1963, on the ground that an equally efficacious remedy is available to the plaintiffs under the Maharashtra Land Revenue Code, 1966. It is

submitted that the MLRC provides a complete statutory machinery for removal of encroachments on Government land, and therefore the plaintiffs ought to have pursued their remedy before the Collector instead of instituting the present civil suit. On this basis, rejection of the plaint is sought.

56. Section 41(h) of the Specific Relief Act provides that an injunction shall not be granted when an equally efficacious remedy is available to the plaintiff by any other usual mode of proceeding. The bar under this provision is not automatic. The Court is required to examine whether the alternative remedy is equally efficacious, that is, whether it affords relief of the same nature and effectiveness for protection of the civil rights asserted. The availability of a remedy in law does not, by itself, attract Section 41(h) unless such remedy is shown to be adequate and effective.

57. Under the Maharashtra Land Revenue Code, the Collector is empowered to take action against unauthorised occupation of Government land, including removal or regularisation of encroachments. These powers are exercised in an administrative capacity for management and control of Government land. The Collector does not adjudicate civil disputes inter se parties, nor does he grant judicial reliefs such as permanent or mandatory injunctions under the Specific Relief Act. Orders passed under the MLRC are executive in nature and are not decrees enforceable through civil process.

58. Reliefs of permanent and mandatory injunction under Sections 38 and 39 of the Specific Relief Act are judicial remedies, granted by Civil Courts after adjudication of rights on the basis of pleadings and evidence. Such remedies are enforceable by decree and execution. Administrative action by the Collector cannot be equated with, or substituted for, these judicial remedies.

59. It is well settled that availability of an administrative or statutory remedy does not bar a civil suit where civil rights are asserted and the alternative remedy is not equally efficacious. The Bombay High Court in *Damodar (cited supra)* has clearly held that public authorities are not competent to grant reliefs in the nature of permanent or mandatory injunctions, which lie exclusively within the jurisdiction of Civil Courts. Consequently, Section 41(h) cannot be invoked where the alternative remedy is administrative and not judicial.

60. In the present suit, the plaintiffs seek reliefs of permanent injunction restraining illegal construction and mandatory injunction directing removal of the alleged encroachment. Such reliefs cannot be granted by the Collector under the MLRC. The statutory remedy relied upon by defendant no.3 is therefore not equally efficacious in terms of nature, scope, and enforceability of relief. The bar under Section 41(h) is not apparent from the plaint and would, in any event, require adjudication on merits.

61. The remedy available under the Maharashtra Land Revenue Code is administrative in nature and cannot be regarded as an equally efficacious remedy for the purpose of Section 41(h) of the Specific Relief Act. Consequently, the jurisdiction of the Civil Court to entertain the present suit and grant injunction is not barred. The objection raised by defendant no.3 under Section 41(h) is devoid of merit and is rejected.

62. In view of the foregoing discussion, none of the grounds urged by defendant no.3 establishes that the suit is barred by any law on the face of the plaint so as to attract Order VII Rule 11(d) of the Code of Civil Procedure. The objections relating to want of jurisdiction, bar under the Maharashtra Land Revenue Code, the Maharashtra Revenue Jurisdiction Act, 1876, res sub judice under Section 10 CPC, res judicata under Section 11 CPC, alleged conflict of jurisdiction, and Section 41(h) of the Specific Relief Act do not disclose any express or implied bar apparent from the plaint. All such contentions involve mixed questions of law and fact requiring adjudication at trial. Consequently, the plaint cannot be rejected at the threshold under Order VII Rule 11(d). The point is therefore answered in the negative.

As to point no.3 :-

63. In view of the findings recorded on point no.1 that the plaint discloses a cause of action within the meaning of Order VII

Rule 11(a) of the Code of Civil Procedure, and on point no.2 that the suit is not barred by any law so as to attract Order VII Rule 11(d) of the Code of Civil Procedure, it follows that the application filed by defendant no.3 for rejection of the plaint is devoid of merit. None of the grounds urged by defendant no.3 satisfies the strict parameters laid down for rejection of plaint at the threshold. The issues raised require adjudication on evidence and cannot be decided at this preliminary stage. Hence, the application deserves to be rejected.

ORDER

- 1] The application filed by defendant no.3 under Order VII Rule 11 of the Code of Civil Procedure for rejection of the plaint in Regular Civil Suit No.193 of 2025 is hereby rejected.
- 2] The observations made herein are confined only to the decision of the application under Order VII Rule 11 CPC and shall not influence the trial of the suit on merits.
- 3] The parties shall bear their own costs of the application.

Place : Gadhinglaj.
Date : 12.01.2026.

(N. S. Puri)
Civil Judge Senior Division,
Gadhinglaj