



**ORDER BELOW EXH.38.**

Shabana Bano Mohd. Amin Panjwani & Anr.

Vs.

State of Maharashtra Thr. Collector, Washim & Anr.

01) Present application has been filed by defendants under Order VII Rule 11 of the Code of Civil Procedure, 1908 r/w. Section 11 of the Bombay Revenue Jurisdiction Act, 1876, Section 158 of the Maharashtra Land Revenue Code, 1966 and Section 41(H) of Specific Relief Act, 1963 thereby praying for rejection of plaint.

02) Perused application, say of plaintiffs at **Exh.42** and documents on record. Also heard learned A.G.P for defendants and learned advocate for plaintiffs.

03) Learned A.G.P for defendants has submitted that the plaintiffs have filed the present suit for declaration that order dated 25/11/2020 passed by defendant No.2 i.e. Tahsildar, Karanja in Revenue Case No.M.R.C.81/Bagayat/4/2020-21 and notice dated 08/01/2021 be declared null and void and also prayed for relief of permanent injunction against defendants thereby restraining them from disturbing plaintiffs' peaceful possession and ownership over the suit property along with an application of temporary injunction.

04) Learned A.G.P for defendants has further submitted that the plaintiffs have illegally converted the suit property from

agricultural into non agricultural use without obtaining the permission of the competent authority as required by law, therefore, the defendant No.2 has conducted an enquiry as per procedure establish by law. It is further submitted that Talathi, Bagayat on 16/10/2020 had inspected the Gat Nos.101 amd 102 i.e. suit properties and found that plaintiffs have unauthorizedly used agricultural suit properties for non agricultural purpose by demarking lay out, by preparing road and by fixing plot boundary marks of all pots demarcated in suit properties and also sold said plots to others without complying with the procedure of non agricultural use of agricultural lands over Gat Nos.101 and 102 admeasuring about 0H. 50R. + 0H. 50R. respectively and accordingly he filed report to defendant No.2 i.e. Tahasildar, Karanja.

05) Learned A.G.P for defendants has further submitted that Tahsildar registered a case bearing No.M.R.C.81/Bagayat/4/2020-21 on the basis of report of Talathi and issued notices to plaintiffs. By said notices Tahsildar, Karanja instructed plaintiffs to remain present before Tahsildar, Karanja on 27/10/2020 for hearing with written submissions. Despite plaintiffs received said notices, they remained absent on 27/10/2010 before Tahsildar, Karanja.

06) Learned A.G.P for defendants has further submitted that as per said notice plaintiffs did not appear in the matter and remained absent before Tahsildar on 27/10/2020 therefore, defendant No.2 had written the Rozanama accordingly and fixed that

case for order on 25/11/2020. It is further submitted that plaintiffs in spite of having full knowledge and knowing consequences of remaining absent in the matter as noticed by Tahsildar, plaintiffs deliberately remained absent on fixed date i.e. on 27/10/2020 and also not appeared thereafter in the case upto date of passing order i.e. 25/11/2020. It was bounden duty of plaintiffs to remain present before Tahsildar and to submit their submission regarding said notices.

07) Learned A.G.P. for defendants has further submitted that as per the provision of Maharashtra Land Revenue Code, 1966 and rules made thereunder, the Tahsildar has right to impose fine for unauthorized use of agricultural land for non agricultural purpose. Therefore, on 25/11/2020 Tahsildar passed an order and calculated the fine amount of Rs.14,66,100/- as per the relevant provisions of law as well as G.R. of Maharashtra Government and directed plaintiffs to pay fine amount within 15 days and if any default is made to pay fine amount within 15 days, it would be recovered as per procedure laid down for recovery of land revenue and intimated the said order to plaintiffs by providing copy of order dated 25/11/2020.

08) Learned A.G.P. for defendants has further submitted that the plaintiffs have not preferred an appeal before appropriate authority under Section 247 of M.L.R.C., 1966 as per the procedure established by law and therefore, the order dated 25/11/2020

passed by defendant No.2 remained unchallenged. Moreover, plaintiffs have not paid the fine amount within time and therefore, Tahsildar issued a notice as per procedure and directed to pay notice/fine amount within seven days from receipt of notice.

09) Learned A.G.P for defendants has further submitted that in spite of receiving said notice of revenue case, if party remained absent on the day fixed for hearing and also not appeared later on in matter to answer the notice given by revenue officer for unauthorized use of agricultural land for non agricultural purpose then there was no occasion for defendant No.2 to adjourn the matter day after day hence it has no force in the pleading of plaintiffs that they have not got the opportunity. It is further submitted that after giving reasonable opportunity to the plaintiffs, defendant No.2 has passed the order on 25/11/2020 against the plaintiffs under Section 45 of the Maharashtra Land Revenue Code, 1966 and relevant provisions of law.

10) Learned A.G.P for defendants has further submitted that the Tahsildar passed the order by following due procedure of law and plaintiffs have remedy to challenge the said order by filing the appeal but plaintiffs without exhausting the right of appeal and remedies available in the provisions of Maharashtra Land Revenue Code, 1966 filed the present suit which is barred by the provision of Section 11 of the Bombay Revenue Jurisdiction Act, 1876 as well as Section 158 of Maharashtra Land Revenue Code, 1966. Moreover, the present suit

of plaintiffs is not tenable in view of Section 41(h) of Specific Relief Act, 1963 as an equally efficacious remedy/relief is obtainable in usual mode i.e. by filing of an appeal. That provision of appeal under Section 247 of Maharashtra Land Revenue Code, 1966 was open for plaintiffs in usual mode.

11) Learned A.G.P for defendants has further submitted that the Tahsildar has absolute jurisdiction and followed the due procedure establish by law and order of Tahsildar is absolute legal order having right and authority to pass such order and thus, this Court has no jurisdiction to entertain the present suit. Moreover, as there is no cause of action to file present suit so suit is required to be dismissed. Hence, learned A.G.P has prayed that considering the above facts and circumstances of the case, plaint may kindly be rejected in the interest of justice.

12) On the contrary, learned advocate for plaintiffs has strongly opposed this application on the ground that the contents of present application are totally false and baseless. It is further submitted that the Tahsildar, Karanja had conducted the proceeding without following the principle of natural justice and without giving any opportunity of hearing to the plaintiffs. Thus, the said order can be challenged before the Civil Court as the principle of natural justice and opportunity of hearing was not given to the plaintiffs.

13) Learned advocate for plaintiffs has further submitted that

the Tahsildar Karanja had not followed all the rules and procedure prescribed in the Maharashtra Land Revenue Code, 1966 and Maharashtra Land Revenue (conversion of use of land and non agricultural assessment) Rules, 1969. That the Tahsildar Karanja illegally imposed conversion tax, Zilla Parishad Tax, Gram Panchayat Tax. It is further submitted that the same can not be imposed as per rules. The Tahsildar, Karanja is supposed to charge the fine as per the rules framed, however, he had not acted as per the said rules. The Tahsildar, Karanja had not done the act in the manner which he was supposed to do as per the rules.

14) Learned advocate for plaintiffs has further submitted that the Tahsildar, Karanja had exceeded his jurisdiction while passing the impugned order. That any act of the Government Officer which is not in accordance to the rules and regulations then such act of the Government officer is not as per the jurisdiction which he was supposed to do and as a consequence of it, such act is illegal, null and void and without jurisdiction or exceeding jurisdiction. It is further submitted that such act can be called in question in Civil Court and the Civil Court have ample jurisdiction to check whether the act of such Government Officer is within jurisdiction or exceeding jurisdiction or without jurisdiction.

15) Learned Advocate for plaintiffs has further submitted that the provisions of the Section 11 of Bombay Revenue Jurisdiction Act and Section 158 of Maharashtra Land Revenue Code, 1966 are not

applicable to the present case. That the suit is not hit by the provisions of Section 41(h) of Specific Relief Act. When the Tahsildar, Karanja had acted exceeding his jurisdiction or without jurisdiction, without following the principle of natural justice and therefore, the order passed by the Tahsildar, Karanja which is challenged in the present suit is null and void, without jurisdiction, ultra vires and not passed after following the rules and regulation as laid down in the Maharashtra Land Revenue Code, 1966 and Maharashtra Land Revenue (conversion of use of land and non agricultural assessment) Rules, 1969, State circular dated 05/02/2018 which is prevailing in the State of Maharashtra for fixing the non agricultural assessment within the urban area or the lands situated within the Municipal Council Limit. Thus the said order can be challenged before the Civil Court. As such, the present suit of the plaintiffs is absolutely tenable and maintainable. Hence, learned advocate for plaintiffs has prayed for rejection of this application with costs by relying upon the judgments of the Hon'ble Bombay High Court and the Hon'ble High Court of Punjab and Haryana delivered in following cases -

- i) **Gopinath Ganpatrao Pensalwar Vs. State of Maharashtra, reported in 2006 (6) ALL MR 504**
- ii) **Prabhukdas Bachhubhai Babaria Vs. Sulbha Wasudeorao Take, reported in 2005 (2) Mh.L.J. 1058**
- iii) **Borough Municipality Vs. Chalisgaon Shree Laxminaryan, reported in AIR 1956 Bombay 646**

- iv) **Sadashiv Chander Bhamgare Vs. Eknath Pandharinath Nangude, reported in AIR 2004 Bombay 378**
- v) **Rajendra Vs. Lalit Kumar, reported in AIR 2020 P & H 145**

16) Following points arise for my determination, I have recorded my findings thereon for the reasons discussed below.

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1)	Whether plaint is required to be rejected under Order VII Rule 11 of Code of Civil Procedure, 1908 as prayed by defendants ?	In the Negative.
2)	What order ?	Application is rejected.

### REASONS

#### As to point No.1:-

17) I have perused record of the matter and also considered the submissions of Learned Advocates appearing for the respective parties. From perusal of plaint, it appears that plaintiffs have filed instant suit for seeking reliefs of declaration and permanent injunction. It is well settled law that when objection is raised under Order VII Rule 11 of C.P.C. 1908 then only plaint averments are required to be looked into. Defence of defendants can not be looked into at this stage. If the plaint is perused then it reveals that plaintiffs have shown the cause of action for filing present suit in para No.13

of the plaint and therefore, at this stage, it can not be said that the cause of action shown by plaintiffs in the plaint is false or there is no cause of action to file instant suit.

18) It is pertinent to note here that it is the main contention of plaintiffs that while passing alleged order dated 25/11/2020 by defendant No.2, he has not followed the principles of natural justice and the provisions of other relevant laws. Therefore, the present suit for declaration and perpetual injunction is maintainable before this Court. It is to be noted here that in view of ratio laid down by the Hon'ble Bombay High Court in the case of **Gopinath Ganpatrao Pensalwar Vs. State of Maharashtra**, reported in 2006 (6) ALL MR 504, this Court is having jurisdiction to entertain present suit for declaration and perpetual injunction and there is no bar under Section 11 of Bombay Revenue Jurisdiction Act, 1876.

19) It is further pertinent to note here that as per Section 158 of Maharashtra Land Revenue Code, 1966 it is provided that no suit shall lie against the State Government or any Officer of the State Government in respect of a claim to have an entry made in any record or register that is maintained under this chapter or to have any such entry omitted or amended. However, in the present suit, plaintiffs have not sought a claim to have an entry made in any record or register that is maintained under this chapter or to have any such entry omitted or amended. As such, there is also no bar to present suit under Section 158 of M.L.R.C., 1966.

20) It is further pertinent to note here that the plaintiffs have sought reliefs of declaration and perpetual injunction in the present suit and said reliefs can only be granted by Civil Court because revenue Courts or revenue authorities under M.L.R.C., 1966 have no power to grant said reliefs. As such, it can not be said that the present suit is barred under Section 41 (h) of Specific Relief Act, 1963 as plaintiffs are having an efficacious remedy of appeal under M.L.R.C., 1966. Therefore, I do not find any substance in the present application. Hence, I answer point No.1 in the negative.

**As to point No.2 :-**

21) In such circumstances, I am of the opinion that, the present application deserves to be rejected. Therefore, I proceed to pass following order.

**ORDER**

- 1] Application is hereby rejected.
- 2] No order as to costs.

Date:- 24/12/2025

**( S. W. Thombre )**  
Civil Judge (Sr.Dn.), Karanja

**CERTIFICATE**

I affirm that the contents of this PDF file judgment/order are same word to word, as per original judgment/order.

- 1) Name of Stenographer :- S. P. Kale (Stenographer G-III)
- 2) Name of Court :- Civil Judge (S.D.), Karanja.
- 3) Date :- 24/12/2025
- 4) Order signed by the presiding officer on :- 24/12/2025
- 5) Order uploaded on :- 26/12/2025