



ORDER BELOW EXH.16.

(CNR No.MHWS110010382025)

Mo. Imran Mo. Shafi Punjani

Vs.

State of Maharashtra Thr. Collector, Washim & Anr.

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 thereby praying for rejection of plaint.

02) Perused application, say of plaintiff given on the overleaf of this application and documents on record. Also heard learned A.G.P for defendants and learned advocate for plaintiff.

03) Learned A.G.P for defendants has submitted that the plaintiff has 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/6/2020-21 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 plaintiff's 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 plaintiff has 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 one Prakash Baliram Rathod had filed a complaint to Tahsildar on 08/09/2021 regarding illegal and unauthorized conversion of agricultural land into non agricultural land. Therefore, Tahsildar instructed to Talathi, Bagayat on 15/10/2020 and directed to inspect the Gat No.95 i.e. suit property and prepare spot inspection and report the actual position of land to Tahsildar. Accordingly, on 16/10/2020 Talathi, Bagayat visited Gat No.95 and found that plaintiff has unauthorizedly used agricultural suit property for non agricultural purpose without complying with the procedure of non agricultural use of agricultural land over Gat No.44/2 admeasuring about 1 H. 2 R. and accordingly he filed report to defendant No.2 i.e. Tahasildar, Karanja on 19/10/2020.

05) Learned A.G.P for defendants has further submitted that Tahsildar registered a case bearing No.M.R.C.81/Bagayat/6/2020-21 on 19/10/2020 on the basis of report of Talathi and issued a notice to plaintiff. By said notice Tahsildar, Karanja instructed plaintiff to remain present before Tahsildar, Karanja on 27/10/2020 for hearing with written submissions. Plaintiff received said notice on 21/10/2020 and plaintiff put his signature over said notice as acknowledgment.

06) Learned A.G.P for defendants has further submitted that as per said notice plaintiff did not appear in the matter and remained absent before Tahsildar on 27/10/2020 and therefore, defendant No.2 written the roznama accordingly and fixed that case for order on 25/11/2020 i.e. after 28 days. In spite of having full knowledge and consequences of remaining absent in the matter as noticed by Tahsildar, plaintiff deliberately remained absent and also not appeared thereafter in the case up to date of order i.e. 25/11/2020.

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.9,58,392/- as per the relevant provisions of law as well as G.R. of Maharashtra Government and directed plaintiff 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 plaintiff by providing copy of order dated 25/11/2020.

08) Learned A.G.P for defendants has further submitted that the plaintiff has neither filed any review petition nor filed 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, plaintiff has not paid the fine amount within time and therefore, Tahsildar issued a notice dated 08/01/2021 to plaintiff 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 once party remained absent on the fixed date for hearing and also did not appear later on to answer the notice given by Revenue Officer and use of agricultural land for non agricultural purpose is made by the plaintiff 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 plaintiff that he has not got the opportunity. It is further submitted that after giving reasonable opportunity to the plaintiff, defendant No.2 has passed the order on 25/11/2020 against the plaintiff under Section 45 of the Maharashtra Land Revenue Code, 1966 and Rule 8 of the Maharashtra Land Revenue (conversion of use of land and non agriculture assessment) Rule, 1969.

10) Learned A.G.P for defendants has further submitted that the Tahsildar passed the order by following due procedure of law and plaintiff has remedy to challenge the said order by filing the appeal but plaintiff 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.

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 plaintiff has strongly opposed this application on the ground that the contents of present application are totally false and baseless and present application is not tenable in the eyes of law. It is further submitted that defendants while filing present application put their defence. However, it is well established principle of law that the application under Order 7 Rule 11 of C.P.C. can only be decided on the basis of plaint and not on the basis of defence put by the defendants. Thus, on this count itself, present application is liable to be dismissed. 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 plaintiff. 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 plaintiff.

13) Learned advocate for plaintiff 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 and 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 plaintiff 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 plaintiff 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. 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 plaintiff is absolutely tenable and maintainable. Hence, learned advocate for plaintiff has prayed for rejection of this application with costs by relying upon the judgment of the Hon'ble Bombay High Court in the case of **Gopinath Ganpatrao Pensalwar Vs. State of Maharashtra**, reported in 2006 (6) ALL MR 504.

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 plaintiff has 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 plaintiff has shown the cause of action for filing present suit in para No.10 of the plaint and therefore, at this stage, it can not be said that the cause of action shown by plaintiff 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 plaintiff 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, plaintiff has 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 plaintiff has 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. 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 – 16/03/2026.

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

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 :- 16/03/2026
- 4) Order signed by the presiding officer on :- 16/03/2026
- 5) Order uploaded on :- 16/03/2026