

SA Pathan

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6340 OF 2022

Jagannath Ramu Mane & Ors	... Petitioners
V/s.	
Shree Ram Bharna Bandgar & Ors	... Respondents

Mr. Amit Sale, for Petitioners.

Mr. B. A. Lawate, for Respondents.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 30, 2023

P.C.:

1. By the present writ petition, the learned Advocate for the petitioner seeks permission to convert the present writ petition into a civil revision application.
2. Permission to convert the writ petition into a civil revision application is granted.
3. Amendment to be carried out forthwith.
4. The revision application challenges the order passed by the Civil Court rejecting the applicants' application under Order 7, Rule 11(d) of the Code of Civil Procedure, 1908 (for short 'CPC').
5. The respondents/original plaintiffs filed Regular Civil Suit No.14 of 2022 seeking a declaration that the order dated 30 July

2018 passed by the Tahsildar and confirmed by the Sub-Divisional Officer on 30 August 2021 be declared illegal and not binding on the respondents. The consequential relief of injunction is sought to restrain the applicants from causing damage to the farm crops in furtherance based on the orders passed by the Tahsildar and Sub-Divisional Officer.

6. Initially, the applicant applied Section 143 of the Maharashtra Land Revenue Code, 1966, before the Tahsildar for the right of way/road over the way boundary between the applicants' and respondents' fields. The Tahsildar, by order dated 30 July 2018, allowed the application.

7. The respondents, aggrieved by the order dated 30 July 2018, filed Appeal No.126 of 2018 before the Sub-Divisional Officer. The Sub Divisional Officer remanded the matter back to the Tahsildar.

8. The Tahasildar, after remand, passed an order recognising applicants right over the way boundary. The respondents challenged Tahsildar's order dated 11 November 2020 by appeal under Section 247 of the Maharashtra Land Revenue Code, 1966 (for short 'M.L.R.C'). The Sub Divisional Officer dismissed the Appeal No.225 of 2020 on merits on 30 August 2021.

9. The respondents, aggrieved by the order dated 30 August 2021 passed by the Sub Divisional Officer, filed a second RTS Appeal bearing No.178 of 2021 under Section 247 of M.L.R.C. On 11 February 2022, the respondents withdrew Appeal No.225 of 2020.

10. After withdrawing the second appeal, the respondents filed Regular Civil Suit No.14 of 2020. The applicants applied for Order 7, Rule 11(d) of CPC in the said suit.

11. The Trial Court, by the impugned order, has rejected the application, holding that the suit is filed for enforcement of civil rights and the last decision of Tahsildar, i.e. on 11 November 2020, needs to be considered for a period of limitation of one year.

12. Learned Advocate for the applicants submitted that the decision of Tahsildar is dated 11 November 2020. The suit was filed on 4 January 2022. Section 143(4) of M.L.R.C. enables an aggrieved person to file a suit challenging decision of Tahsildar within one year from the date of such decision and, therefore, the suit filed on 4 January 2022 is not maintainable as it is barred by limitation prescribed under sub-Section 4 of Section 143 of M.L.R.C. Apart from the said fact, the respondents have filed an appeal under Section 247 M.L.R.C., and the appellate authority has been decided the appeal on merits, the decision of Tahsildar merge with the decision of Sub Divisional Officer and, therefore, the suit is not maintainable.

13. *Per contra*, the learned Advocate for the plaintiff submitted that the decision of the Sub Divisional Officer dated 30 August 2021 needs to be considered for counting limitation under sub-Section 4 of Section 143 of M.L.R.C. The plaintiffs have withdrawn the Second Appeal No.225 of 2020, and the suit is maintainable as per sub-Section 4 of Section 143 of M.L.R.C.

14. I have considered the submissions made on behalf of the

parties. The issue involved in the revision application is whether the civil suit challenging the order of Tahsildar is maintainable after such order was subjected to appeal, and the Appellate Authority can decide the appeal on merits.

15. For the purpose of deciding the issue involved, it is necessary to premise the relevant provisions of Section 143 of M.L.R.C. Section 143 of M.L.R.C. reads as under:

143. (1) The Tahsildar may inquire into and decide claims by persons holding land in a survey number to a right of way over the boundaries of other survey numbers.

(2) In deciding such claims, the Tahsildar shall have regard to the needs of cultivators for reasonable access to their fields.

(3) The Tahsildar's decision under this section shall, subject to the provisions of sub-sections (4) and (5), be subject to appeal and revision in accordance with the provisions of this Code.

(4) Any person who is aggrieved by a decision of the Tahsildar under this section may, within a period of one year from the date of such decision, institute a civil suit to have it set aside or modified.

(5) Where a civil suit has been instituted under sub-section (4) against the Tahsildar's decision, such decision shall not be subject to appeal or revision.

16. On perusal of Chapter IV of M.L.R.C., it appears that the authority under the said Code is conferred the power of fixation and demarcation of boundaries. Section 143 of M.L.R.C. confers power to Tahsildar to decide claims by persons holding land in a survey number to a right of way over the boundaries of other survey numbers. Sub-Section (2) of Section 143 of the Code

confers the power of Tahsildar to decide the rationale claims having regard to the needs of cultivators for reasonable access to their fields. Sub-Section (3) of Section 143 of the Code states that such adjudication by the Tahsildar shall, subject to the provisions of sub-Sections (4) and (5), be subject to appeal and revision in accordance with the provisions of this Code. Sub-Section (4) confers the right of the aggrieved person to institute a suit against the decision of Tahsildar within one year from the date of such decision. Sub-Section (5) takes away the right of the aggrieved person to institute the appeal once the suit is decided as per sub-Section (4).

17. On a conjoint reading of the entire Section 143 of M.L.R.C., it appears that the provision, in express words, lays down one remedy to the exclusion of the other; therefore, the party could resort to one of them at his option. Concurrent remedies are available before different authorities for the same purpose.

18. Where a person has a right to choose between two remedies that are not co-existent but alternative, and he adopts one of those remedies, his Act immediately operates as a bar as regards the other, and the bar is final and absolute. When two remedies are offered by a statute for the challenging validity of the order, they may be held to be alternatives if the two remedies are inconsistent with each other or if the cause of action is exhausted by resorting to one of them and obtaining satisfaction so that nothing remains to be enforced by the other remedy.

19. The principle upon which the question involved needs to be decided in this case has been expressed by Scrutton, L.J. as follows:

“If by statute you have *an option to do A or B, but not both*, and you have done A, it does not seem to me relevant to say, “I have done A, but I have not elected to do it.”

20. This proposition has been affirmed by Lord Macmillan in the case of **Young v. Bristol Aeroplane Ltd.**, (1946) A.C. 163 (179). The basis of the proposition is the words of the statute itself to the effect that the person aggrieved must *not have both remedies*. The principle underlying the theory of ‘alternative’ remedies is that the two remedies are ‘mutually exclusive’. The choice indicates that with full knowledge of facts, the litigant opted to sue for certain relief

21. The person aggrieved by the decision of the Tahsildar has two remedies: first, to challenge the decision of the Tahsildar by way of appeal under Section 247 of M.L.R.C., or second, to file a civil suit against the decision of the Tahsildar under Sub-Section (4) is explicit in its language which makes the decision of Tahsildar subject to the civil suit. The two options available to the aggrieved person are mutually exclusive. Once the person exercises one option, he is not entitled to exercise the remaining option. The aggrieved person can challenge in the civil suit Tahsildar's order or can file an appeal against the decision of Tahsildar. Once such a person files an appeal, and the Appellate Authority decides such appeal on merits, the decision of Tahsildar merges with the

decision of the Sub Divisional Officer (Appellate Authority). Once such a merger occurs, Tahsildar's decision is no longer available for challenge in a civil suit. The rights conferred under sub-Section (4) of Section 143 of M.L.R.C. are restricted to challenge the decision of Tahsildar. Therefore, the civil suit challenging the decision of the Sub Divisional Officer is not maintainable as the aggrieved person has a remedy provided under the statute to ventilate his grievance.

22. In this context, it would be profitable to refer to the judgment of the Apex Court in the case of **Dhulabhai and Others vs the State of Madhya Pradesh and Another** reported in 1969 Mh. L. J. 1. The decision is instructive on the Civil Court's power to entertain the civil suit. The Apex Court, in paragraph 35, has laid down parameters of the jurisdiction of the Civil Court to entertain the suit, which are

“35. Neither of the two cases of *Firm of Illuri Subayya* or *Kamla Mills* can be said to run counter to the series of cases earlier noticed. The result of this inquiry into the diverse views expressed in this Court may be stated as follows:

(1)

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that

all questions about the said right and liability shall be determined by the Tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3)

(4).....

(5)

(6)

(7)

23. In the facts of the case, the right of adjudication of a person to have right of way over the boundary is created under the provisions of M.L.R.C. The said Code confers remedy to such a person. When a right is created under the statute, and a remedy is also under a statute, the civil court's jurisdiction is impliedly barred. Clause (2) of paragraph 34 of **Dhulabai** (Supra) holds that where there is no express exclusion of civil court power to entertain the suit, it is necessary for the Court to examine remedies and scheme of the particular Act to find out whether a statute creates right and provides for determination of such right by a Tribunal so constituted. It is only when the statute provides no remedy for ventilating the grievance that the Civil Court shall have the power to decide the suit.

24. The Apex Court thereafter, in the case of **Siv Kumar Chadha Vs. Municipal Corporation of Delhi NCLT & Ors.**, reported in 1993 (3) SCC 161 on occasion to consider civil Courts power in the context of the scheme of Delhi Municipal Corporation in the facts of the said case, the dispute was in relation to property tax. After referring to the judgment of **Dhulabai** (Supra), the Apex Court held that where a particular act creates a right and provides a

forum for enforcement of such right, the ouster of civil court jurisdiction can be upheld.

25. Coming back to the facts of the case, it appears that the plaintiff exhausted the statutory remedy of statutory appeal. The Appellate Authority decided the appeal on merits. As held earlier, it is only the decision of Tahsildar that can be made subject matter of the suit.

26. Therefore, two options available to the aggrieved person are to file an appeal or a civil suit. He cannot fall back on the second remedy under the statute with one exercised.

27. The aforesaid discussion leads to the conclusion of the suit filed by the respondents after the decision on merits by the Sub Divisional Officer against the decision of Tahsildar was not maintainable. The Trial Court committed jurisdictional error by rejecting the application. Hence, the following order:

(i) The impugned order dated 14 March 2022 passed by the Joint Civil Judge, Junior Division, Jath, below Exhibit 21 in Regular Civil Suit No.14 of 2022, is quashed and set aside.

(ii) The application below Exhibit 21 in Regular Civil Suit No.14 of 2022 is allowed.

(iii) The Regular Civil Suit No.14 of 2022 stands dismissed.

28. The writ petition stands disposed of in the above terms. No costs.

(AMIT BORKAR, J.)