



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO.98 OF 2025
WITH
CIVIL APPLICATION NO.2516 OF 2025
IN
SECOND APPEAL NO.98 OF 2025**

Chandrakant Sahebrao Pawar
Age: 49 Years, Occu.: Agri.,
R/o Chinchondi-Patil, Tal. Nagar,
Dist. Ahmednagar

..Appellant
(Orig. Plaintiff)

Versus

1. State of Maharashtra
(Collector, Ahmednagar)
2. The Tahsildar,
Tahasil Office, Ahmednagar,
Tal. & Dist. Ahmednagar

..Respondents
(Orig. Defendants)

...

Mr. L. B. Palod, Advocate for the Appellant.
Mr. D. B. Bhange, AGP for Respondents.

...

**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 04th MARCH, 2025.**

ORDER:-

1. The appellant/original plaintiff impugns judgment and decree dated 05.07.2024 passed by District Judge, Ahmednagar in Regular Civil Appeal No.140/2019, thereby upholding judgment and decree dated 27.02.2019 passed by Civil Judge, Senior Division, Ahmednagar in Regular Civil Suit No.199/2011. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

2. The appellant/plaintiff instituted Regular Civil Suit No.199/2011 seeking declaration that notice dated 28.03.2011 issued by respondents is illegal and perpetual injunction to recover amount in pursuance to said notice. The plaintiff contends that he is farmer. On 28.07.2007, Circle Officer obstructed his tractor bearing Registration No.MH-16-F-4150 alongwith trolley attached thereto, which was loaded with 1 brass of sand. He was fined for Rs.3100/- for the reason that sand was transported without license. On 30.07.2007, again he was served with notice alleging that he has excavated 300 brass sand from Block No.652 in unauthorized manner. He was asked to deposit Rs.30,000/- towards royalty and fine of Rs.2,70,000/-. The plaintiff challenged said order before Deputy Divisional Officer, Ahmednagar, who rejected Appeal. Thereafter, plaintiff persuaded Appeal before Additional Collector, Ahmednagar and finally before Additional Commissioner, Nashik, who partly allowed Appeal directing Tahsildar to cause fresh enquiry. However, respondent no.2-Tahsildar without making proper enquiry, made report to Additional Commissioner, Nashik and again notice dated 28.03.2011 is served upon him to deposit royalty and fine amount.

3. The plaintiff then approached Civil Court seeking relief that notice dated 28.03.2011 is illegal and perpetually restrain respondents from recovering amount.

4. The Trial Court framed issues, recorded evidence of parties and finally dismissed suit. The decree passed by Trial Court is affirmed by Appellate Court under impugned judgment and decree.

5. Mr. Palod, learned Advocate appearing for appellant submits that Trial Court erroneously observed that suit is not maintainable in view of alternate efficacious remedy to file Appeal under provisions of Maharashtra Land Revenue Code (for short 'MLR Code'). According to him, jurisdiction of Civil Court is not barred to examine correctness of notice, when such notice is issued without following principles of law or procedure established under law. The respondents have failed to follow proper procedure while issuing recovery notice and imposing penalty. The impugned notice is example of gross violation of principles of natural justice. It sans requisite reasons and material to establish unauthorized excavation of sand at the hands of appellant.

6. Mr. Palod, learned Advocate further submits that Trial Court failed to frame necessary issues, so also Appellate Court ignored procedure contemplated under Order XLI Rule 31 of the Code of Civil Procedure. The judgment and decree under Appeal is perverse and liable to be quashed and set aside. To buttress his contentions, he relies upon judgment of Division Bench of this Court in case of ***Gulab Ayubkhan Pathan Vs. District***

Collector, Collectorate Office, Ahmednagar and another¹ and submits that suit challenging notice issued under Section 48(7) of the Maharashtra Land Revenue Code is maintainable.

7. Per contra, learned AGP appearing for respondent-State supports impugned judgment and decree. He submits that Courts have concurrently held that suit itself was not maintainable. Hence, no relief can be granted to plaintiff.

8. Having considered submissions advanced, it can be observed that plaintiff seeks declaration against notice issued to him under Section 48(7) of the MLR Code, by which he is directed to deposit royalty and penalty for illegal excavation/transportation of sand. Apparently, plaintiff had availed his remedy of Appeal under Section 247 of the MLR Code in first round, when he preferred Appeal before Deputy Divisional Officer, Ahmednagar bearing No.23/2007 and second appeal bearing RTS No.63/2008 before Additional Collector at Ahmednagar and lastly, Appeal bearing RTS No.418/2009 before Additional Commissioner at Nashik. The Additional Commissioner had directed respondent no.2-Tahsildar to make fresh enquiry and submit report. In pursuance of that, impugned notice dated 28.03.2011 was served upon plaintiff. It is, therefore, clear that plaintiff has his own remedy to file Appeal

¹ 2019 (5) Mh.L.J. 574.

before Deputy Divisional Officer, Ahmednagar, in case he is aggrieved by impugned notice dated 28.03.2011.

9. In light of aforesaid provision of MLR Code, issue canvassed before this Court is whether Civil Suit challenging notice issued under Section 48(7) of MLR Code can be maintained or not, particularly with reference to facts of present case.

10. Mr. Palod, learned Advocate heavily relied upon exposition of law by Division Bench of this Court in case of ***Gulab Ayubkhan Pathan*** (supra). In that case, notice which was served by Tahsildar under Section 48(7) of MLR Code upon plaintiff was subject matter of challenge and plaintiff had sought declaration that such notice is not binding on him, eventually sought perpetual injunction from taking any steps for recovery of amount mentioned in notice/order. It was contention of plaintiff that he has no concern with lands and unauthorized excavation of minerals therefrom and, therefore, notice served upon him is misconceived. In that scenario, this Court held that Section 34 of Specific Relief Act empowers Civil Court to grant such decree, if plaintiff is no way concerned with lands or excavation of minerals from such land.

11. In present case, there is no dispute as to factual matrix. It is not disputed that plaintiff is owner of land or tractor was used for

transportation of sand. The enquiry carried by respondents suggests that appellant excavated 300 brass sand from Block Nos.652 and 653 situated at village Chinchondi Patil. Further, appellant has already surrendered to jurisdiction of Revenue Authorities, persuaded his Appeal upto Divisional Commissioner and after remand of matter seeks to challenge impugned notice by filing suit.

12. It is trite that, Civil Court would have jurisdiction to entertain challenge to the notice issued by Statutory Authority exercising jurisdiction under any Act, Rule or Regulation only when it is shown that such Authority lacks inherent jurisdiction to issue such notice or there is fundamental lapse in procedure contemplated in said statute. In present case, such circumstances are not pleaded in suit. Therefore, both Courts are justified in holding that suit would not be maintainable in view of alternate efficacious remedy under MLR Code and Civil Court would have no jurisdiction to entertain suit.

13. Needless to mention that plaintiff would have his remedy to knock door of Appellate Authority against impugned notice as prescribed under MLR Code. In that case, he can seek exclusion of period exhausted in prosecuting suit while counting period of limitation. In that view of the matter, no substantial question of law arises for consideration in this Second Appeal.

14. Consequently, Second Appeal sans merit and stands dismissed.

15. In view of dismissal of Second Appeal, Civil Application stands disposed of accordingly.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/March-2025