IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 196 OF 2025

Dipak Chandrabhan Gadhade/Gavande,
Age : 42 years, Occu :Agri.,
R/o : Kaudgaon Athre,
Tq. Pathardi, Dist.: Ahmednagar. ...APPLICANT

VERSUS

1. The State of Maharashtra
Through its Collector, Ahmednagar,
Collector office, Ahmednagar.

2. The Tahsildar,
Tahsil Office, Pathardi,
Dist- Ahmednagar.

3. The Circle officer,
Karanji, Tal- Pathardi,
Dist- Ahmednagar.

4. Bhimraj Nana Barde,
Age : 60 years, Occu : Agri.

5. Adinath Bhanudas Gadhade/Gavande.
Age : 40 years, Occu : Agri.

6. Balasaheb Bhika Shinde,
Age_ 52 years, Occu- Agril,
Res. No.4 to 6 R/o : Kaudgaon Athre,
Tq. Pathardi, Dist.: Ahmednagar. RESPONDENTS
(Res. No. 4 to 6
Original Plaintiffs)

7. Bhanudas Dhondiba Gadhade/Gawande,
Age- 64 years, Occu- Agril,

8. Lilabai Ramdas Umbare,
Age- 64 years, Occu- Agril,

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9. Zumbarbai Suryabhan Thorat,
Age- 65 years, Occu- Agril,
R/o Kasar Pimpalgaon, Tal- Pathardi,
Dist. Ahmednagar.

10. Macchindra Nana Barde,
Age- 65 years, Occu- Agril,

11. Rangubai Shripati Mali,
Age- 66 yrs, Occu- Agril,

12. Gahininath Rama Shirsath,
Age- 60 years, Occu- Agril,

13. Mirabai Karbhari Shirsath,
Age- 65 years, Occu- Agril,

14. Sonaji Nana Barde,
Age- 65 years, Occu- Agril,
Res. No.6 to 7 & 9 to 14 R/o : Kaudgaon Athre,
Tq. Pathardi, Dist.: Ahmednagar. ....RESPONDENTS
(Original Defendants)

Shri. Jiwan J. Patil, Advocate h/f. Shri. R. S. Kasar, Advocate for Applicant
Shri. S. V. Hange, AGP for Respondent Nos.1 to 3
Mrs. Suvarna M. Zaware, Advocate for Respondent Nos.4 to 6

CORAM : SHAILESH P. BRAHME, J.
RESERVED DATE : 03.02.2026
PRONOUNCED DATE : 12.02.2026

JUDGMENT :-

1. Heard both sides finally.

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2. Applicants are challenging order below Exhibit-19 passed on 30.07.2025 refusing to reject the plaint in Regular Civil Suit No.525 of 2024. The suit was filed by respondent nos.4 to 6 for declaration that the order dated 15.02.2023 passed in Rasta Case No.24 of 2020 by the Tahsildar is bad in law.

3. Applicants – defendants sought rejection of plaint vide application Exhibit-19 on the ground of maintainability of the suit under Section 143 of the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as 'the Code') and that the suit is barred by limitation in view of Section 143(4) of the Code. It was contested by respondent nos.4 to 6. The application is rejected by the impugned order.

4. Mr. Jiwan J. Patil, learned counsel appearing for the applicants submits that the suit for challenging order dated 15.02.2023 in Rasta Case No.24 of 2020 is not tenable as recourse to remedy of RTS Appeal no.79 of 2023 was being taken. It is submitted that the remedies provided by the Code under Section 143 of the Code are mutually exclusive. It is further submitted that the suit has not been filed within one year from the date of the order of Tahsildar

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which is barred by Section 143(4) of the Code. It is submitted that the judgment of the Coordinate Bench in **Jarasand s/o Suryabhan Borkar vs. Bhagwat s/o Suryakant Kale and Others** in **Civil Revision Application No.146 of 2022** is distinguishable on facts and will not help the respondent.

5. Per contra, Ms. Suvarna Zaware, learned counsel for respondent nos.4 to 6 would submit that it is not the limitation provided under Section 143(4) that would apply, but the suit is governed by Article 58 and 113 of the Limitation Act, 1963. She would submit that the limitation would start from the date of the order of the Appellate Authority and it is recurring. It is further submitted that it is the choice of the party either to prefer the appeal under the Code or to file the suit. It cannot be said that there is no cause of action and the suit is not tenable. It is further submitted that respondent nos.2 to 4 have no any other remedy available and they are bonafide prosecuting their suit. It is further submitted that in view of Section 14 of the Limitation Act, 1963, the period during which RTS Appeal No.79 of 2023 remained pending needs to be excluded.

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6. The controversy between the litigating sides pertains to the easement to approach their respective lands. The applicant is the owner of land bearing Gat No.106 and the respondents – plaintiffs are the occupants of Gat Nos.120, 121 and 122 situated at Kaudgaon Athare. The applicant had filed Rasta Case No.24 of 2020 under Section 143 of the Code before the Tahsildar. His application was allowed on merits, vide judgment dated 15.02.2023 holding that he was having easement and the same shall not be obstructed by the respondent – plaintiff. Being aggrieved, RTS Appeal No.79 of 2023 was preferred before the Sub-Divisional Officer. Application Exhibit-5 was rejected by the Appellate Authority on 10.06.2024. Later on, the respondents withdrew the appeal on 20.08.2024.

7. In this backdrop, respondent nos.4 to 6 have filed Regular Civil Suit No.525 of 2024 on 28.06.2024, challenging the order dated 15.02.2023 passed by the Tahsildar in Rasta Case No.24 of 2020. The suit was not immediately filed after the adjudication by the Tahsildar.

8. It is relevant to refer to Section 143 of the Code which is as follows :

> *"143. Right of way over boundaries.*
> *(1) The Tahsildar may inquire into and decide claims by*

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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 field.
(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."

9. The remedy of the appeal under the Code is provided by Section 247, as per Schedule E of the Code. The orders passed by the Tahsildar under sub-section (3) are susceptible to the appeal and revision. A plain reading of Section 143 of the Code indicates that the order of the Tahsildar can simultaneously be challenged by filing civil suit. Once recourse is taken to the civil suit, it is impermissible to fallback to the provisions of sub-section (3) to have recourse to remedy of appeal under Section 247 of the Code.

10. In the present matter, the crucial question is as to whether the plaintiffs, having taken recourse to the remedy of appeal under

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Section 247, can take recourse to filing of the suit against the order of the Tahsildar. The wording of sub-section (4) shows that the decision of the Tahsildar is susceptible to the remedy of the civil suit. Had it been the intention of the legislature to permit the aggrieved person to file a suit even after the decision rendered by the Appellate and Revisional Authority, the wordings "decision of the Tahsildar" would not have appeared in sub-section (4). Sub-section (5) prohibits recourse to appeal and revision, once a party approaches the Civil Court against the Tahsildar's decision. The emphasis remains on the Tahsildar's decision.

11. My attention is adverted by Mr. Jiwan Patil, learned counsel for the applicant to the judgment of **State of Rajasthan vs. Union of India and Ors.** reported in **2018(12) SCC 83** to buttress the doctrine of election when two remedies are provided for litigant. It's paragraph no.3 is as follows :

> *"3. After hearing the arguments of the learned counsel for the parties, we find substance in the aforesaid submission of the defendants. Even if we presume that the suit was maintainable, at the same time the plaintiff also had remedy of filing the statutory appeals etc. by agitating the matter under the Finance Act. It chose to avail the remedy under the Finance Act. The Doctrine of Election would, therefore, become applicable in a case like this. After*

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choosing one particular remedy the plaintiff cannot avail the other remedy as well, in respect of the same relief founded on same cause of action."

12. Further reliance is placed on the matter of **Jagannath Ramu Mane & Ors vs. Shree Ram Bharma Bandgar & Ors.** in **Writ Petition No.6340 of 2022** dated 30.11.2023. The facts are more akin to the present case. The remedies provided under Section 143 of the Code for the aggrieved party against the order of Tahsildar are mutually exclusive. Following paragraphs are relevant :

"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,

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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 the 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.

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."

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13. It can be said from the ratio laid down above that once the Tahsildar's decision merges into the order of Sub Divisional Officer, the remedy of the suit is not available. There is a room to argue that in the present case, the appeal before the Sub Divisional Officer was withdrawn and therefore the suit can be said to be maintainable. But the next judgment clarifies the position. The applicant has relied on **Sanjay Kerba Kadam and Anr. vs. Manchak Kondiba Kadam and Ors** in **Civil Revision Application No.126 of 2022** dated 08.03.2023. Following are the relevant extracts :

> *"6. Perusal of Section 143(5) of the Code states that 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. Sub-section (4) provides that 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. Section 247 of the Code provides for another remedy i.e., an appeal may be preferred before the competent Revenue Authority. It is thus, clear that whichever remedy is availed that can only be taken to its logical end by following further permissible remedies.*
>
> *7. As admitted in the present case the order passed by the Tahsildar has been taken exception by filing Appeal under Section 247 of the Code. Thus, suit filed for challenge to the order of Tahsildar may not be maintainable. The question however arises in this case as to the application of Order VII, Rule 11 when the entire plaint cannot be rejected, on that ground."*

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In the present case, the respondent – plaintiff once chosen a remedy under the Code should have been taken to its logical end instead of withdrawing appeal from the Sub Divisional Officer. In the present case also, the plaint is liable to be rejected as the suit is not maintainable.

14. Mrs. Zaware, learned counsel for respondent nos.4 to 6 seeks to rely on the judgment of **Jarasand** (supra) passed by the coordinate bench. Interestingly, the learned Single Judge did not consider earlier judgment of learned Single Judge in case of **Jagannath** (supra). Section 29 of the Limitation Act, 1963 has also not been taken into account. The facts are distinguishable from the present case. In the present case, only relief of declaration is sought. Another relief is in the form of interim relief of temporary injunction. The observations rendered by learned Single Judge in the matter of **Sanjay Kadam** (supra) have not been considered albeit it was cited before the Court. Hence, the decision will not help the respondent.

15. Once it is held that the limitation provided under the general law of limitation is not applicable in view of the limitation provided in the special statute, Section 14 of the Limitation Act, 1963

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also cannot be pressed into service. Otherwise also, any delay in preferring the suit cannot be condoned by invoking Sections 5 to 14 of the Limitation Act.

16. Learned counsel for respondent nos.4 to 6 has referred to the judgment of **Adani Power Ltd. And Another vs. Union of India and Others** reported in **2026 SCC Online SC 11**. No arguments were advanced as to how the said judgment would enure to the benefit of the respondents. I find that facts are totally different. This judgment does not support the respondents. Further reliance is placed on the judgment of **Kirpal Singh vs. Government of India, New Delhi and Ors** reported in **2025(2)ALD 165**. The issue before the Supreme Court was in respect of exclusion of the time under Section 14 of the Limitation Act, 1963 while filing objections under Arbitration and Conciliation Act, 1996. The said judgment is distinguishable on facts. It will not help the respondents.

17. A useful reference can be made to the decision of the Supreme Court in the matter of **Prof. Sumer Chand vs. Union of India and Others** reported in **(1994) 1 Supreme Court Cases 64**. The relevant extracts are as follows :

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"6. The first contention that has been urged by Shri Wad is that Section 140 of the Act is in the nature of a general provision governing all suits in respect of offences or wrongs alleged to have been done by a police officer, and Article 74 of the Schedule to the Limitation Act, which prescribes the period of limitation for suits for compensation for a malicious prosecution, is in the nature of special provision and since a special provision prevails over the general provision, the limitation for the suit filed by the appellant against the respondent will have to be governed by Article 74 of the Limitation Act and if the limitation is computed in accordance with Article 74 of the Limitation Act, the suit was not barred by limitation. We do not find any substance in this contention. As indicated in the Preamble, the Limitation Act is an enactment which consolidates and amends the law for the limitation of suits and other proceedings connected therewith. It is a law which applies generally to all suits and proceedings. It is, therefore, in the nature of a general enactment governing the law of limitation. The Delhi Police Act has been enacted for the purpose of amending and consolidating the law relating to regulation of police in the Union Territory of Delhi. The Act is a special enactment in respect of matters referred to therein. Section 140 of the Act imposes certain restrictions and limitations in the matter of institution of suits and prosecutions against police officers in respect of acts done by a police officer under colour of duty or authority or in excess of such duty or authority. One such restriction is that such suit or prosecution shall not be entertained and if entertained shall be dismissed, if it is instituted more than three months after the date of the act complained of.

7. Section 29(2) of the Limitation Act provides as under:

"(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period

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prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law."

8. Since the Act is a special law which prescribes a period of limitation different from the period prescribed in the Schedule to the Limitation Act for suits against persons governed by the Act in relation to matters covered by Section 140, by virtue of Section 29(2) of the Limitation Act, the period of limitation prescribed by Section 140 of the Act would be the period of limitation prescribed for such suits and not the period prescribed in the Schedule to the Limitation Act. This means that if the suit filed by the appellant falls within the ambit of Section 140 then the period of limitation for institution of the suit would be that prescribed in Section 140 and not the period prescribed in Article 74 of the Limitation Act."

The above aspect is not dealt with in case of **Jagannath** (supra).

18. The decision of Tahsildar was passed on 15.02.2023 and the suit is filed on 28.06.2024 which is clearly barred by limitation provided under Section 143 (4) of the Code. In this regard, it has to be mentioned that the limitation prescribed under the Code would prevail over the Limitation Act, 1963. The Trial Court did not take into consideration Section 29 of the Limitation Act, 1963, and its purport. Impugned order is unsustainable.

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19. I, therefore, pass following order :

ORDER

a. Civil Revision Application is allowed.

b. Impugned order is quashed and set aside.

c. Plaint in RCS No.525 of 2024 shall stand rejected.

(SHAILESH P. BRAHME, J.)

PRW

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