



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12308 OF 2026

Shree Samarth Shripati Baba Shikshan Sanstha,
A Public Trust registered under the Bombay
Public Trusts Act, 1950 (now the Maharashtra
Public Trusts Act, 1950) under Registration No.
E-359 (Poona), founded on 07/03/1955,
conducting the school known as “Shree Samarth
Shripati Baba Janta Vidyalaya (Primary)” at
Railway Quarter Nos. D-1, D-2, D-3 and D-4,
near Railway Community Hall, Tadiwala Road,
Pune – 411 001.

Through its Secretary Mrs Rupali Vikram
Bhalerao, aged about 45 years, Occupation:
Teacher, residing at S. No. 27/1, Munjaba Vasti,
Near Dhaneshwar School, Dhanori, Pune.

...Petitioner

Versus

1. The Estate Officer, Central Railway, Pune,
having office at the Office of the Divisional
Railway Manager, Central Railway, Railway
Station Road, Pune – 411 001.

2. The Divisional Railway Manager, Central
Railway, Pune having office at Railway Station
Road, Pune – 411 001.

3. Union of India, through the General Manager,
Central Railway, Chhatrapati Shivaji Maharaj
Terminus, Mumbai – 400 001.

4. The State of Maharashtra, through the
Government Pleader, High Court, Appellate Side,
Bombay.

...Respondents

Mr. Sumant Deshpande, with Rahul Kulkarni, for the Petitioner.
Ms. Nisha Valani, for Respondent Nos. 2 and 3.
Ms. Sulbha Chipade, AGP, for Respondent No.4-State.

CORAM : N. J. JAMADAR, J.
RESERVED ON : 18th SEPTEMBER 2026
PRONOUNCED ON : 22nd SEPTEMBER 2026

JUDGMENT:

1. Rule. Rule made returnable forthwith, and, with the consent of the learned Counsel for the parties, heard finally.

2. By this Petition under Article 227 of the Constitution of India, the Petitioner takes exception to a judgment and order dated 2nd September 2026 passed by the learned District Judge, Pune, in Civil PPE Appeal No. 1 of 2024, whereby the Appeal preferred by the Petitioner against an order dated 5th December 2023 passed by the Estate Officer, Central Railway, Pune, directing the eviction of the Petitioner under the provisions of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (“the PPE Act, 1971”), came to be dismissed.

3. The background facts leading to this Petition can be stated in brief as under:

3.1 The Petitioner is a Public Charitable Trust registered under the Maharashtra Public Trusts Act, 1950. The Petitioner runs, “Shree Samarth Shripati Baba Janata Vidyalaya”, a Marathi medium, primary school with a pre-primary English Section at Tadiwala Road, Pune.

3.2 The Petitioner claims the Divisional Railway Manager, Central Railway (R2), had put the Petitioner into possession of Railway Quarter Nos. D-1, D-2, D-3 and D-4 at Tadiwala Road Colony, Pune, (“the public premises”) for the purpose of running the said school. Initially, Respondent No.2 had rendered assistance to the Petitioner to run the school by providing grant-in-aid

3.3 Respondent No.2 contends that, an Agreement was executed on 1st October 1974 with the Petitioner, allowing the Petitioner to use and occupy the public premises for running the school for a period of two years only.

3.4 It appears, under a communication dated 26th April 1989, Respondent No.2 professed to terminate the said Agreement dated 1st October 1974. It was, *inter alia*, contended that the Railway Board has revised the rates of the licence fees and called upon the Petitioner to pay the arrears of the licence fees at the revised rate from 1st August 1980 to 31st July 1989 and execute a fresh Agreement. Under the cover of the said letter dated 26th April 1989 copies of the new Agreement incorporating new revised fixed rates were enclosed for the acceptance of the Petitioner and return of one copy thereof for the record of Respondent No.2.

3.5 It seems, Respondent No.2, thereafter, decided to terminate the Agreement and regain the possession of the public premises. As is

evident from the record, the Estate Officer had initiated proceedings under the PPE Act, 1971, being PPE Case No. 1 of 2011, seeking to evict the Petitioner who was stated to be in unauthorised occupation. Upon a statement being made by the Secretary of the Petitioner that the public premises would be vacated in two to three months, the said proceeding was purportedly dropped.

3.6 On 21st September 2021, a fresh notice under Section 4 of the PPE Act, 1971 was issued to the Petitioner. The proceeding commenced before the Eviction Officer (R1). It appears that, after causing appearance through an Advocate, the Petitioner did not participate in the proceeding before the Estate Officer despite ample opportunities.

3.7 Eventually, after appraisal of the material on record including the events that had transpired in the earlier proceeding No. 1 of 2011, the Estate Officer returned a finding that the Petitioner-trust was in unauthorised occupation of the public premises. Resultantly, by an order dated 5th December 2023, the Petitioner-trust was directed to vacate the public premises.

3.8 Being aggrieved, the Petitioner preferred an Appeal before the District Judge, Pune. Two principal grounds were raised in the Appeal. First, there was a fresh Agreement in the year 1989 and, thus, the notice under Section 4, dated 21st September 2021 was invalid as it proceeded on the premise that the 1974 Agreement was terminated by

Respondent No.2. Consequently, the Petitioner-trust cannot be said to be in unauthorised occupation of the public premises. Second, as the Petitioner-trust has been in open, continuous and hostile possession of the public premises, since the date of the termination of the Agreement, it had perfected its title by way of adverse possession.

3.9 By the impugned judgment and order, the learned District Judge repelled both the contentions. It was held that, inter alia, there was no material to show that a fresh Agreement was executed in the year 1989 and the reliance on the letter dated 26th April 1989 , whereby the Petitioner was informed that rates of licence fees were revised and the Petitioner was called upon to return one copy of the Agreement after acceptance thereof, was at best an offer and no concluded contract between the parties came in force.

3.11 Being further aggrieved, the Petitioner has preferred this Petition.

4. I have heard, Mr. Sumant Deshpande, the learned Counsel for the Petitioner, Ms. Nisha Valani, the learned Counsel for Respondent Nos. 2 and 3 and Ms. Sulbha Chipade, the learned AGP, for Respondent No.4-State. With the assistance of the learned Counsel for the parties, I have also perused the material on record.

5. Mr. Deshpande, learned Counsel for the Petitioner submitted that the notice under Section 4 of the PPE Act, 1971, which was based on the purported termination of the Agreement dated 1st October 1974,

was itself illegal. Since there was renewal of the agreement in the year 1989, as evidenced by the letter dated 26th April 1989, the occupation of the Petitioner's Trust cannot be said to have become unauthorized within the meaning of clause (g) of Section 2 of the PPE Act, 1971. Once the foundational fact of the occupation of the Petitioner having been rendered unauthorized was not proved, the entire proceeding for the eviction of the Petitioner under Section 5 of the PPE Act, 1971, stood vitiated.

6. As a second limb of the submission, Mr. Deshpande would urge that, the rent was accepted from the Petitioner even after the said letter dated 26th April 1989. It was only since the year 2010, Respondent No.2 stopped raising the bills and accepting the rent. The learned District Judge, according to Mr. Deshpande, failed to appreciate that, both the parties had acted under an impression that the agreement stood renewed in the year 1989. Thus, there was a renewal of the agreement by the conduct of the parties. In these circumstances, the fact that the Petitioner could not place on record a copy of the agreement, which came to be executed pursuant to the aforesaid renewal letter, could not have been arrayed against the Petitioner.

7. In contrast to this, Ms. Nisha Valani, learned Counsel for Respondent Nos.2 and 3, would submit that the contentions now sought to be urged on behalf of the Petitioner are not only demonstrably

incorrect but also malafide. In the year 2014 itself, the Secretary of the Petitioner had appeared in the proceedings initiated earlier and sought 2 to 3 months time to vacate the public premises. Believing the undertaking of the then Secretary of the Petitioner, the said proceedings was dropped. At that time, the defence of renewal of agreement was not at all raised. Even in the instant eviction proceedings before the Estate Officer, the Petitioner did not appear despite multiple opportunities. There is not an iota of material to indicate that, a fresh agreement was executed pursuant to the communication dated 26 April 1989. Nor any office bearer of the Petitioner Trust has affirmed an affidavit before the authorities below that there was such a renewal of the agreement. A bald and vague stand was taken that the documents were lost in the incidents of burglary at the school premises. The learned District Judge was, thus, fully justified in negating such contentions raised on behalf of the Petitioner.

8. Ms. Valani further urged with a degree of vehemence that, the petitioner who had come in occupation of the public premises had the audacity to raise a defence of acquisition of title by adverse possession. Therefore, this Petition does not deserve to be entertained in exercise of the discretionary jurisdiction.

9. In Rejoinder, Mr. Deshpande attempted to salvage the position by canvassing a submission that, in this Petition, the Petitioner is not

pursuing the ground of adverse possession which was inadvisedly taken by the Petitioner before the authorities below.

10. At the outset, it must be recorded that, the contentions on behalf of the Petitioner raised before the authorities below premised on the acquisition of title by adverse possession do not deserve any countenance. Having come in the occupation of the subject premises under the terms of an express grant, the possession of the Petitioner would never become adverse until all the classical requirements of *nec vi nec clam nec precario* were satisfied. In any event, the plea of renewal of the agreement is inherently incongruous with the acquisition of title by way of adverse possession.

11. This takes me to the pivotal question whether the occupation of the Petitioner of the public premises could be termed “unauthorized”. Clause (g) of Section 2 of the PPE Act, 1971, defines the term “unauthorized occupation”, as under :

“(g) “unauthorized occupation”, in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises, has expired or has been determined for any reason whatsoever.”

12. The phraseology of clause (g) of Section 2 indicates that the Parliament has used the words ‘means’ and ‘includes’ to define

unauthorized occupation. The definition is thus in two parts. The first part covers in its fold the occupation by any person of the public premises without authority. The second part includes the continuance in occupation by any person of the public premises after the authority under which he was allowed to occupy the premises has expired or has been determined. The authority to occupy the premises may be by way of grant or any other mode of transfer. The expression “any other mode of transfer” further expands the nature of the authority under which the person in occupation came in the occupation of the public premises. It includes a lease, which is one of the mode of the transfer of the property. Consequently, even a person who is in occupation of the public premises after the term of lease has expired, or the lease is otherwise determined, can be said to be in unauthorized occupation of the public premises.

13. A profitable reference in this context can be made to the Constitution Bench judgment of the Supreme Court in the case of **Ashoka Marketing Ltd. and Anr. V/s. Punjab National Bank and Ors.**¹ wherein the import of the definition of unauthorized occupation was expounded, as under :

“30. The definition of the expression 'unauthorised occupation' contained in Section 2(g) of the Public Premises Act is in two parts. In the first part the said expression has been defined to mean the occupation

¹ (1990) 4 SCC 406

by any person of the Public premises without authority for such occupation. It implies occupation by a person who has entered into occupation of any public premises without lawful authority as well as occupation which was permissive at the inception but has ceased to be so. The second part of the definition is inclusive in nature and it expressly covers continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. This part covers a case where a person had entered into occupation legally under valid authority but who continues in occupation after the authority under which he was put in occupation has expired or has been determined. The words "whether by way of grant or any other mode of transfer" in this part of the definition are wide in amplitude and would cover a lease because lease is a mode of transfer under the Transfer of Property Act. The definition of unauthorised occupation contained in Section 2(g) of the Public Premises Act would, therefore, cover a case where a person has entered into occupation of the public premises legally as a tenant under a lease but whose tenancy has expired or has been determined in accordance with law." (emphasis supplied)

14. In the said case, after adverting to the decision in the case of **Brigadier K.K.Verma V/s. Union of India**², the Supreme Court clarified

² AIR 1954 Bom 358

that after the decision in the said case, the legislature intervened and introduced the definition of the expression 'unauthorised occupation' in the Public Premises (Eviction of Unauthorized Occupants) Act, 1958, which definition has been reproduced in Section 2(e) of the Public Premises Act and in the said definition the legislature has taken care to make an express provision indicating that the expression 'unauthorised occupation' includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.

15. The core controversy that thus wrenches to the fore is, whether the occupation of the Petitioner became unauthorized on account of the revocation of the authority granted to the Petitioner to occupy the public premises. The defence of the Petitioner entirely rests on the purported renewal of the agreement as evidenced by the letter dated 26th April 1989.

16. At this stage, it is necessary to note that no material could be placed on the record of the Estate Officer or the Appellate Authority to show that in pursuance of the letter dated 26th April 1989, a fresh agreement was executed by and between the parties to renew the lease.

17. Mr. Deshpande made a valiant attempt to wriggle out of the situation by forcibly canvassing a submission that both the parties have acted under an impression that the agreement was renewed and, thus, the conduct of Respondent No.2 of acceptance of the rent even after the purported termination of 1st October 1974 agreement vide the said letter dated 26th April 1989 by the Respondent No.2, constituted an assent for the creation of new tenancy.

18. The aforesaid submission brings to the fore the legal implications of the tenant continuing in possession of the leased premises after the expiry of the term of the lease and/or the consequences that emanate from the acceptance of the rent after the expiry of the term of the lease, under the provisions of Section 116 of the Transfer of Property Act.

19. The legal position is well settled. The act of holding over after the expiration of the term does not, by itself, create a new tenancy. Nor mere acceptance of the amount equivalent to rent by a landlord from the tenant in possession after the determination of the lease, *per se* constitutes the evidence of a new agreement of tenancy. The creation of a new tenancy has to be a bilateral act. There ought to be consent of both the lessor or lessee for the creation of new tenancy; express or implied by conduct.

20. A profitable reference can be made to the judgment of the Supreme Court in the case of **Bhawanji Lakhamhi & Ors. V/s. Himatlal**

Jamnadas Dani and Ors.³, wherein it was enunciated that the act of holding over after the expiration of the term does not create a tenancy of any kind. If a tenant remains in possession after the determination of the lease, the common law rule is that he is a tenant on sufferance. A distinction should be drawn between a tenant continuing in possession after the determination of the term with the consent of the landlord and a tenant doing so without his consent. The observations in para No.9 read as under :

“9. The act of holding over after the expiration of the term does not create a tenancy of any kind. If a tenant remains in possession after the determination of the lease, the common law rule is that he is a tenant on sufferance. A distinction should be drawn between a tenant continuing in possession after the determination of the term with the consent of the landlord and a tenant doing so without his consent. The former is a tenant at sufferance in English Law and the latter a tenant holding over or a tenant at will. In view of the concluding words of section 116 of the Transfer of Property Act, a lessee holding over is in a better position than a tenant at will. The assent of the landlord to the continuance of possession after the determination of the tenancy will create a new tenancy. What the section contemplates is that on one side there should be an offer of taking a new lease evidenced by the lessee or sub-lessee remaining in possession of the property after his term was over and on the other side there must be a definite consent to the continuance of possession by the landlord expressed by acceptance of

3(1972) 1 SCC 388

rent or otherwise. In **Kai Khushroo Bezonjee Capadia v. Bai Jerbai Hirjibhoy Warden and another**⁴, the Federal Court had occasion to consider the question of the nature of the tenancy created under section 116 of the Transfer of Property Act and Mukberiea J. speaking for the majority said, that the tenancy which is created by the "holding over" of a lessee or under-lessee is a new tenancy in law even though many of the terms of the old lease might be continued in it, by implication; and that to bring a new tenancy into existence, there must be a bilateral act. It was further held that the assent of the landlord which is founded on acceptance of rent must be acceptance of rent as such and in clear recognition of the tenancy right asserted by the person who pays it.....”

21. In the aforesaid case, the Supreme Court did not approve the submission, like the one sought to be canvassed by Mr. Deshpande in this case, that the absence of a formal agreement manifesting consent of the lessee to accept the lease at the revised rent was of no significance. The observations of the Supreme Court in paragraph No.13 are material, and, hence, extracted below :

“13. Learned counsel for the appellants argued that whenever rent is accepted by a landlord from a tenant whose tenancy has been determined, but who continues in possession, a tenancy by holding over is created. The argument was that the assent of the lessor alone and not that of the lessee was material for the purposes of section 116. We are not inclined to accept this contention. We have already shown that the

⁴ 1949-50 FCR 262

basis of the, section is a bilateral contract between the erstwhile landlord and the erstwhile tenant. If the tenant has the statutory right to remain in possession, and if he pays the rent, that will not normally be referable to an offer for his continuing in possession which can be converted into a contract by acceptance thereof by the landlord. We do not say that the operation of section 116 is always excluded whatever might be the circumstances under which the tenant pays the rent and the landlord accepts it. We have earlier referred to the observations of this Court in **Ganga Dutt Murarka V/s. Kartik Chandra Das**⁵ regarding some of the circumstances in which a fresh contract of tenancy may be inferred. We have already held the whole basis of section 116 of the Transfer of Property Act is that, in case of normal tenancy, a landlord is entitled, where he does not accept the rent after the notice to quit, to file a suit in ejectment and obtain a decree for possession, and so his acceptance of rent is an unequivocal act referable only to his desire to assent to the tenant continuing in possession. That is not so where Rent Act exists; and if the tenant says that landlord accepted the rent not as statutory tenant but only as legal rent indicating his assent to the tenant's continuing in possession, it is for the tenant to establish it. No attempt has been made to establish it in this case and there is no evidence, apart from the acceptance of the rent by the landlord, to indicate even remotely that he desired the appellants to continue in possession after the termination of the tenancy. Besides, as we have already indicated, the animus of the tenant in tendering the rent is also material. If he tenders the rent as the rent payable under the statutory tenancy, the landlord cannot, by accepting it as rent, create a tenancy by holding over. In such a case the

5 (1961) 3 SCR 813

parties would not be id idem and there will be no consensus. The decision in Ganga Dutt (supra), which followed the principles laid down by the Federal Court in **Kai Khushrao Bezonjee Capadia v. Bai Jerbai Hirjibhoy Warden and another (supra)** is correct and does not require reconsideration.”

22. The aforesaid decision was followed by the Supreme Court in the case of **C. Albert Morris V/s. K. Chandrasekaran and Ors.**⁶ In that case also, an argument was advanced on behalf of the occupant premised on the receipt of rent by the landlord after the cancellation of the lease. The Supreme Court observed that, the consensus of judicial opinion in this country was that a mere continuance in occupation of the demised premises after the expiry of the lease, notwithstanding the receipt of an amount by the quondam landlord would not create a tenancy so as to confer on the erstwhile tenant the status of tenant or a right to be in possession.

23. After adverting to a number of judgments including the decision in the case of **Bhawanji Lakhamshi and Ors. (supra)**, the Supreme Court concluded that, mere acceptance of rent by the landlord respondent herein from the tenant in possession after the lease has been determined either by efflux of time or by notice to quit would not create a tenancy so as to confer the erstwhile tenant the status of a tenant or a right to be in possession.

⁶ (2006) 1 SCC 228

24. In the light of the aforesaid exposition of law, the submission on behalf of the Petitioner that, notwithstanding the absence of any document to evidence creation of lease after the termination of the earlier agreement dated 1st October 1974, the subsistence of the lease can be inferred from the conduct of the parties or the purported acceptance of the rent, cannot be accepted unreservedly. Even if one were to assume that a copy of the agreement was forwarded by the Respondent No.2 to the Petitioner to convey its acceptance by executing the same, yet, in the absence of such acceptance on the part of the Petitioner, no bilateral agreement to create a new tenancy can be said to have come in force. The consent of the lessee cannot be presumed.

25. Nor the fact that the Respondent No.2 accepted some amount even after the aforesaid letter dated 26th April 1989 terminating the earlier agreement, by itself, justifies an inescapable inference that a fresh lease was created and the occupation of the public premises by the Petitioner was reckoned by the Respondent No.2 as authorized.

26. Moreover, upon perusal of the material on record this Court finds that there was no clinching evidence to demonstrate that the Petitioner-trust even paid the rent at the revised rate beyond the year 1990. Thus, even if the case of the Petitioner that it had paid rent at the revised rate for about a year, after the letter dated 26th April 1989, is accepted at par, that would not lead to an inescapable inference that the authority to

occupy the public premises was granted for an indefinite period of time or in perpetuity, much less the lease became indeterminable.

27. On the contrary, the material on record indicates that Respondent No.2 reckoned the jural relationship between the Respondent No.2 and Petitioner trust as that of licensor and licensee and what was professed to be revised was the licence fee and the bills were also raised towards the revised nominal licence fee.

28. Thus, looked at from any perspective the termination of the authority to occupy the public premises cannot be faulted at as the Petitioner-trust failed to establish that after the agreement dated 1st October 1974, was terminated, the authority to occupy the public premises was granted for a particular term or that the lease was otherwise indeterminable.

29. The conspectus of the aforesaid consideration is that, the challenge to the impugned order is devoid of substance. The Petition, therefore, deserves to be dismissed.

30. Hence, the following order:

ORDER

- (i) The Writ Petition stands dismissed.
- (ii) Rule discharged.

No costs.

[N. J. JAMADAR, J.]

31. At this stage, the learned Counsel for the Petitioner seeks stay to the execution and operation of the order passed by the Estate Officer.

32. The learned Counsel for Respondent Nos.2 and 3 strongly opposed the prayer. The Court is informed that the school is running in the public premises. Around 200 students are pursuing education in the school run in the public premises. An abrupt eviction of the Petitioner-trust from the public premises will adversely affect the educational prospects of the students.

33. In these circumstances, this Court considers it expedient in the interest of justice to grant a reasonable time to the Petitioner to vacate the public premises. Thus, time is granted to the Petitioner – trust till 31st December 2026, to vacate the public premises.

[N. J. JAMADAR, J.]