

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 2335 OF 1995**

1. Hanmant Jaisingh Ahirekar
2. Shrirang Jaisingh Ahirekar (deceased)
by heirs
- 2A Dattatraya Shrirang Ahirekar
minor through guardian and mother
Smt. Padma Shrirang Ahirekar
- 2B Smt. Padma Shrirang Ahirekar
3. Smt. Shevantabai w/o Jaisingh
Ahirekar,
All Residents of village Vikhale,
Taluka Koregaon, District Satara.

...Petitioners
(Heirs of Ori.
Tenant)

Versus

1. Baburao Raghunath Ahirekar,
since deceased through heirs and
legal representatives:-
- 1(a) Shri Kantaram Baburao Ahirekar
R/o. Vikhale, Taluka Koregaon,
Dist : Satara
3. Shri Subhash Baburao Ahirekar
R/o At and Post :- Vikhale,
Taluka – Koregaon, District – Satara
(Via. Valter Station)
(Amended as per Addl. R's Court order
dated 13/10/2003, passed in C.A.
No.1855/03)

...Respondents
(Ori.Defendants)

Mr. Pradeep J. Thorat, for Petitioners.

Mr. Rajendra V. Pai, a/w Mr. Bhalchandra Shinde, Mr. Aloukik R. Pai, Mr. Akshay R. Pai, Mr. Vinay Kalra, Ms. Nikita K. Dharamshi & Mr. Ajit A. Kocharekar, for Respondents.

CORAM: N. J. JAMADAR, J.

RESERVED ON : 3rd April, 2019

PRONOUNCED ON : 23rd August, 2019

JUDGMENT :-

1. This petition under Article 227 of the Constitution of India takes exception to the judgment and order dated 20th October, 1994, passed by the learned Member, Maharashtra Revenue Tribunal, Pune-1 (“the MRT”) in Revision Application No. MRT.NS.VI.1/91 (TNC.B.132/91), whereby the learned Member allowed the revision application, and quashed and set aside the order passed by the Sub-Divisional Officer, Koregaon, Sub-Division, Satara, on 15th October, 1990, in Tenancy Appeal No.4 of 1988, under Section 84 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as “the Act of 1948”) directing the eviction of the respondents from the agricultural lands bearing Gat Nos.22, 24A, 287, 290 to 294A situated at village Vikhale, Taluka Koregaon, District Satara (hereinafter referred to as “the suit lands”).

2. The background facts leading to the instant petition can be stated in brief as under:

(a) The predecessor-in-title of the respondents, Shri.Tatya Ahirekar was the landlord of the suit lands. Mr.Jaisingh Ahirekar, the predecessor-in-title of the petitioners, was the

tenant of the suit lands. The petitioners and their predecessor-in-title are hereinafter referred to as “the tenant” and the respondents and their predecessor-in-title are referred to as “the landlord”.

(b) The original landlord obtained a certificate under Section 88-C of the Act of 1948, on 10th July, 1962, on the ground that the lands did not exceed the economic holding and total annual income of the landlord did not exceed Rs.1,500/-. It is the claim of the landlord that in view of the grant of the certificate under Section 88-C of the Act of 1948, the Agricultural Lands Tribunal (“ALT”) was persuaded to drop the proceedings under Section 32-G of the Act of 1948. The original tenant Jaisingh died on 23rd September, 1980. The landlord preferred an application bearing Application No.77 of 1982, seeking a negative declaration that the deceased Jaisingh was not the tenant of the suit lands. By order dated 20th September, 1987, the ALT dismissed the application of the landlord holding,

inter alia, that the deceased Jaisingh was in cultivation of the suit lands on the Tiller's day. The tenants were advised to file an application under Section 84 of the Act of 1948 for restoration of possession of the suit lands.

(c) The tenants filed an application under Section 84 of the Act before the Collector, Satara. The Sub-Divisional Officer, Satara, after holding an enquiry was persuaded to allow the application holding, *inter alia*, that though the landlord was a certificated landlord, the possession of the suit lands was not obtained in accordance with the provisions contained in Section 33-B of the Act of 1948; the ALT in a proceedings under Section 70(b) of the Act of 1948 found that the deceased tenant was in cultivation of the suit lands and the said finding has attained finality. In this backdrop, the claim of the landlords that they have obtained possession of the suit lands from the tenants was held to be unsustainable as the landlords were not entitled to take possession of the tenanted lands, otherwise than in accordance with the provisions

contained in the Act of 1948. Thus, the Sub-Divisional Officer allowed the application and directed the landlords to evict themselves from the suit lands and restore the possession of the suit lands to the tenants.

3. Being aggrieved by and dissatisfied with the aforesaid order of restoration of possession, the landlords preferred revision before the MRT. It appears that the said revision application was not preferred within the stipulated period of limitation, and, thus, was accompanied by an application for condonation of delay. The learned Member, MRT, after hearing the parties, was persuaded to condone the delay and allow the revision application by one and the same order dated 20th October, 1994. To arrive at the finding that the deceased Jaisingh was not in possession of the suit lands on Tiller's day, the learned Member, MRT, placed reliance on a statement of Hanmant Ahirekar, petitioner No.1, to the effect that the landlords were personally cultivating the suit lands since many years. Thus, the learned Member interfered with the order of restoration of possession of the suit lands, passed by the Sub-Divisional Officer.

4. Being aggrieved by and dissatisfied with the aforesaid order of MRT, the petitioners have invoked the writ jurisdiction of this Court.

5. I have heard Shri Pradeep J. Thorat, the learned counsel for the petitioners and Mr.Pai, the learned counsel for the respondents at a considerable length. I have also perused the orders passed by the authorities under the Act, 1948, and the original record and proceedings.

6. Mr.Thorat mounted a multi-pronged challenge to the impugned order passed by MRT. First and foremost, according to Mr.Thorat, the learned Member, MRT committed a grave error in passing a composite order of condonation of delay in preferring the revision and deciding the revision itself. The said course of action caused serious prejudice to the petitioners-tenants. The tribunal did not get the jurisdiction to entertain and decide the revision unless the delay was condoned. This could not have been done by the tribunal while finally determining the revision, urged Mr.Thorat. Secondly, the learned Member committed a manifest error in discarding the fact that the proceedings under section 70(b) had attained

finality and the negative declaration sought by the landlord was refused. The tribunal could not have resorted to a statement allegedly recorded in the said proceedings to overturn a finding of fact recorded by the Sub-Divisional Officer in a proceedings under section 84 of the Act. Thirdly, the learned Member, MRT exceeded the revisional jurisdiction and embarked upon a fact-finding enquiry, which is impermissible in law. Fourthly, the learned Member, MRT lost sight of a primary fact that the certificated landlord was enjoined to institute a proceedings under section 33-B of the Act, within the stipulated period. In the absence of such proceedings, the landlord was not justified in divesting the tenants of the possession of the suit land, otherwise than in accordance with the provisions of the Act, 1948. Thus, the fact that the tenants allegedly surrendered the possession of the suit land voluntarily, was of no avail. The MRT, thus, completely misdirected itself in allowing the revision by the impugned order, submitted Mr.Thorat.

7. Mr.Pai, the learned counsel for the landlord, on the other hand, submitted that not much mileage can be drawn from the fact that the application for condonation of delay in preferring the revision and the revision itself were determined by one and

the same order, impugned herein. Mr.Pai took the Court through the impugned order in support of the submission that the learned Member ascribed adequate reasons to condone the delay. In the circumstances, the composite order cannot be called in question. On the merits of the matter, Mr.Pai would urge that the tenants had resorted to the proceedings under section 84 of the Act with a clever design to overcome the possible challenge on the count of limitation, which the tenants would have encountered if the proceedings under section 29 of the Act was instituted. Since it was a case of voluntary surrender, pursuant to an order under section 88-C of the Act, 1948, the recourse to the provisions under section 84 of the Act was wholly impermissible. To obviate a possible challenge on the count of limitation and also with a view to deprive the landlord an avenue of appeal, the tenants invoked the jurisdiction of the Collector under section 84 of the Act. Moreover, since the proceedings under section 32G of the Act have been dropped by the authorities under the Act, at this juncture, no interference is warranted in the impugned order, canvassed Mr.Pai.

8. The aforesaid submissions now fall for consideration. To begin with, the aspect of limitation. Indubitably, the learned Member, MRT, proceeded to condone the delay and determine the revision, simultaneously, by the impugned order. The justifiability of such a course of action is put in contest by the tenants. In order to lend support to the submission that such a course of action is impermissible, the learned counsel for the petitioners placed reliance upon two judgments of a learned Single Judge of this Court. In the case of ***National Buildings Construction Corporation Ltd & Anr. Vs. Regional Labour Commissioner (Central), Nagpur***¹, wherein the authority had condoned the delay in the matter and had also allowed the application on merits by a common order, the learned Single Judge, observed that in view of an earlier order passed by the Division Bench of this Court in the case of ***Achutrao Vs. Topaji***² and another judgment in Writ Petition No.1796 of 2004, such course of action was not open and the order impugned therein was required to be quashed and set aside on that ground alone. Ultimately, the matter was remitted back to

1 2006(1) Mh.L.J. 669

2 1963 Mh.L.J. 93

the respondent-Regional Labour Commissioner, for a fresh determination.

9. The aforesaid judgment was followed in the case of **Shankar Ramrao Rangnekar Vs. Narayan Sakharam Sawant & Ors.**³, wherein the MRT had condoned the delay in preferring the revision and decided the revision also by one and the same order. This Court had observed in paragraph 8 as under :

“8 The law in this respect is well settled. When there is delay, the Tribunal has to first proceed to consider its condonation. It gets jurisdiction to consider the controversy on merits only after such delay is condoned, Here consideration of merits as also consideration of the prayer for condonation of delay is simultaneous. View of this Court in M.M. College of Science Vs. R.T. Borkar 1997 (2) Mh.L.J. 168 and National Building Construction vs. Regional Labour Commissioner 2006 (1) Mh.L.J. 669 clinch the issue in favour of Petitioner.”

10. With the aforesaid observations, the matter was remitted back to MRT, to first consider the prayer for condonation of delay and, in the event delay is condoned, by passing appropriate order, then, the MRT shall look into the controversy in the revision on merits.

3 2013 (1) Mh.L.J. 706

11. The insistence upon the determination of application for condonation of delay, in the first instance, stems from two objectives. One, in the absence of the order of condonation of delay, the tribunal is denuded of the jurisdiction to entertain the proceedings on merits. Two, the determination of application for condonation of delay, one way or the other, provides an opportunity of hearing to the parties, and, a further opportunity to assail the legality, propriety and correctness of the said order, before an appropriate forum, in the event, any of the parties is aggrieved by the said determination.

12. The learned counsel for the respondents endeavoured to impress upon the Court that, in the instant case, the consideration of the application for condonation of delay and the determination of the revision on merits, neither constitutes a serious procedural defect nor caused any prejudice to the petitioners. Laying emphasis upon the observations of the Supreme Court in the case of **N. Balakrishnan Vs. M. Krishnamurthy** ⁴, *inter-alia*, to the effect that the words “sufficient cause” under section 5 of the Limitation Act, 1963 should receive a liberal construction so as to advance

4 AIR (1998) SC 3222

substantial justice, it was submitted that the MRT has ascribed justifiable reasons and, on that count, this Court should be loathe to interfere with the order of MRT.

13. Drawing the attention of the Court to the observations in paragraph 7 of the judgment of this Court in the case of ***Shankar Ramrao Rangnekar*** (Supra), wherein the Court has recorded that no just and sufficient cause to condone the delay was apparent, it was urged that the instant case stands on a different footing as the learned Member, MRT has given elaborate reasons to condone the delay. Alternatively, it was submitted that the matter needs to be remitted back to the learned Member, MRT for a fresh determination.

14. It is true that the learned Member, MRT has assigned reasons to condone the delay in paragraph 6 of the impugned order. It was, in terms, observed that there was no carelessness and gross negligence on the part of the applicant and, thus, the tribunal was inclined to lean in favour of condonation of delay. Had there been no other factor, this Court would have preferred to proceed to determine the controversy raised in the instant matter, on merits, rather than finding fault with the course of

action adopted by the learned Member, MRT. However, as it would become evident from the following discussion that the learned Member, MRT has misdirected himself both, on jurisdictional aspect and the core controversy between the parties, the irregularity in condoning the delay, while finally determining the revision, cannot be simply brushed aside.

15. As observed earlier, the learned Member, MRT was persuaded to overturn the finding recorded by the Sub-Divisional Officer, by taking into account a statement made by Hanmant Ahirekar, Petitioner No.1, to the effect that the landlord was personally cultivating the suit land since last many years. On the strength of aforesaid statement, a further inference was drawn that the tenant was not in possession of the suit land on the Tiller's day. The learned Member, MRT, thus, found that the claim of the landlord that the deceased original tenant had voluntarily surrendered the possession of the suit land, after the grant of a certificate under section 88-C of the Act, was reasonable and appropriate.

16. Evidently, the learned Member, MRT interfered with a finding of fact recorded by the Sub-Divisional Officer to the

effect that the landlord had not taken possession of the suit land in accordance with the provisions of the Act, 1948. Interestingly, the learned Member, MRT did not advert to the fact that the ALT had recorded a finding, in a proceeding under section 70(b) of the Act, 1948, that the tenant was in possession of the suit lands on 1st April 1957 and, thus, the landlord's application seeking a negative declaration was dismissed.

17. Whether this approach of MRT is justifiable? For an answer, it is necessary to appreciate the nature of the revisional jurisdiction exercised by MRT under section 76 of the Act. To retain emphasis, and appreciate contours of the jurisdictional limitations of MRT, section 76 is extracted below :-

“S. 76 Revision : (1) *Notwithstanding anything contained in the Bombay Revenue Tribunal Act, 1939, 1 an application for revision may be made to the [Maharashtra Revenue Tribunal] constituted under the said Act against any order of the Collector on the following grounds only:*

(a) *that the order of the Collector was contrary to law;*

(b) *that the Collector failed to determine some material issue of law; or*

(c) *that there was a substantial defect in following the procedure provided by this Act, which has resulted in the miscarriage of justice.*

(2) *In deciding applications under this section the [Maharashtra Revenue Tribunal] shall follow the procedure which may be prescribed by rules made*

under this Act after consultation with the [Maharashtra Revenue Tribunal].”

18. From the phraseology of Section 76(1) it becomes abundantly clear that the MRT is a Tribunal of limited jurisdiction. The grounds on which MRT may entertain a challenge to, and, if found necessary, interfere with, an order passed by the Collector have been specifically spelled out by Clauses (a) to (c). The jurisdiction of MRT is thus circumscribed by the text of sub-section (1) of Section 76.

19. The distinction between revisional and appellate jurisdiction is well recognised. The limited nature of revisional jurisdiction in contradistinction to the appellate power was illuminatingly pointed out by a three-Judge Bench of the Supreme Court in the case of the ***The State of Kerala vs. K.***

M. Charia Abdulla and Co.⁵, in the following words:

“There is an essential distinction between an appeal and a revision. The distinction is based on differences implicit in the said two expressions. An appeal is a continuation of the proceedings; in effect the entire proceedings are before the appellate authority and it has power to review the evidence subject to the statutory limitations prescribed. But in the case of a revision, whatever powers the revisional authority may or may not have, it has not the power to review the evidence unless the

5 AIR 1965 Supreme Court 1585.

statute expressly confers on it that power. That limitation is implicit in the concept of revision."

(emphasis supplied)

20. A profitable reference can also be made to a recent Constitution Bench judgment in ***Hindustan Petroleum Corporation Ltd. vs. Dilbahar Singh***⁶, wherein while construing the revisional power of the High Court, under the State Rent Control legislations, the Supreme Court adverted to, and explained, the distinction between appellate and revisional jurisdiction. The relevant part of paragraph 28 reads as under :-

"28.Conceptually, revisional jurisdiction is a part of appellate jurisdiction but it is not vice versa. Both, appellate jurisdiction and revisional jurisdiction are creatures of statutes. No party to the proceeding has an inherent right of appeal or revision. An appeal is continuation of suit or original proceedings, as the case may be. The power of the appellate court is coextensive with that of the trial court. Ordinarily, appellate jurisdiction involves rehearing on facts and law but such jurisdiction may be limited by the statute itself that provides for the appellate jurisdiction. On the other hand, revisional jurisdiction, though, is a part of appellate jurisdiction but ordinarily it cannot be equated with that of a full-fledged appeal. In other words, revision is not continuation of suit or of original proceeding. When the aid of Revisional Court is invoked on the revisional side, it can interfere within the permissible parameters provided in the statute. It goes without saying that if a revision is provided against an order passed by the Tribunal/appellate authority, the decision of the Revisional Court is the operative decision in law. In our view, as regards the extent of appellate or revisional jurisdiction, much would, however, depend on the language employed by the statute conferring appellate jurisdiction and revisional jurisdiction."

(emphasis supplied)

6 (2014) 9 SCC 78.

21. In the backdrop of the aforesaid exposition of the legal position, reverting to the aspect of the extent of revisional jurisdiction of MRT under Section 76 of the Act of 1948, it is imperative to note that the legislature has even not vested a general power of revision in MRT. On the other hand, the revisional jurisdiction is restricted to correct what can properly be termed as errors of law or substantial defect in procedure entailing miscarriage of justice.

22. While construing the scope and extent of the revisional powers of the Tribunal under Section 76 of the Act, in the case of ***Rahimatulla Rahiman Sarguru vs. Bapu Hari Mane and another***,⁷ the Supreme Court has held that the powers of revision entrusted to Maharashtra Revenue Tribunal under Section 76 of the Bombay Tenancy and Agricultural Lands Act, are practically identical with the second appellate power of the High Court under Section 100 of Code of Civil Procedure, before it was amended by Act 104 of 1976.

23. In this context, reliance placed by Mr.Thorat, on the judgment of a learned Single Judge of this Court, in the case of

7 1979(4) SCC 391.

**Rama Vithal Kalantre since deceased by his heirs and
LRs. Banabai Rama Kalantre & Ors. Vs. Pandurang**

Hindurao Patil ⁸, appears well founded. In the said case, the Court observed as under :-

“4. Having considered rival submissions, I have no hesitation in accepting the submission canvassed on behalf of the petitioners that the Tribunal has exceeded its revisional jurisdiction as provided for under Section 76 of the Act. The scope of interference in revisional jurisdiction is circumscribed by the rigours of Section 76 of the Act. The legal position has been expounded in the case of Maruti Bala Raut (supra). In the present case, the Tribunal has reappreciated the entire evidence on record to overturn the finding of fact reached by the Appellate Authority. The revisional authority had interfered not because the finding of fact recorded by the Appellate Authority was error apparent on the face of record or was manifestly wrong; but on fair reading of the judgment of the Tribunal, the approach of the Tribunal appears to be that since another view was possible, it would prefer the view taken by the first authority. This is impermissible.”

(emphasis supplied)

24. Mr.Pai, the learned counsel for the respondents attempted to salvage the position by canvassing a submission that in the instant case, the Sub-Divisional Officer has passed order under section 84 of the Act, against which no appeal is provided. If viewed in this backdrop, the revisional jurisdiction against an order passed under section 84 of the Act, is more or less akin to

8 2005(2) Mh.L.J. 961

the appellate jurisdiction. Inviting the attention of the Court to clause (c) of section 76(1), it was urged that, in the facts of the instant case, as the Sub-Divisional Officer had entertained an application under section 84 of the Act, the learned Member, MRT was justified in correcting an order passed by the Sub-Divisional Officer which was contrary to the law.

25. To bolster up the aforesaid submission, reliance was placed on the following observations of this Court in the case of ***Laxman @ Bhaiyya Pandurang Edke (died through LRs.) Vs. Vishwanath Kashiba Chemte (Since died through LRs.)***⁹ :

“8 A plain reading of the above provision would make it manifest that if the order passed by the Collector is found to be contrary to the law then it can be interfered with by the MRT. Secondly, where the Collector failed to determine some material issue of law then also such revisional jurisdiction can be exercised by the Tribunal. The MRT would be within its legal bounds to interfere with the order of the Collector if such order is found to be perverse or that some material facts have not been considered by the Collector.”

(emphasis supplied)

26. I am afraid to accede to the aforesaid submission, which profess to enlarge the scope of revisional jurisdiction, based on

the premise of non-availability of an appeal against the order passed under section 84 of the Act. The plain reading of section 76 of the Act (extracted above), does not permit such a distinction to be made on the basis of the order being appealable or otherwise.

27. The learned Member, MRT, in the case at hand, clearly, exceeded the revisional jurisdiction in overturning the finding of fact recorded by the Sub-Divisional Officer by, firstly, placing reliance upon a statement of the petitioner No.1 in a proceedings which had concluded, and, secondly, totally ignoring the fact that the order passed by the ALT that the original tenant was in possession of the suit lands on the Tiller's day, which had attained finality.

28. The learned Member, MRT, seems to have committed a grave error in recording a finding that the claim of the landlord that the original tenant had voluntarily surrendered the possession of the suit land is reasonable and appropriate and, on the strength thereof, interfering with the order of restoration of possession. In the process, the learned Member, MRT, completely lost sight of the fact that the Act, 1948 frowns upon

the divesting the tenant of the possession of the agricultural land otherwise than in accordance with the provisions contained in the Act, 1948. It would be suffice to note that section 15 of the Act, 1948 specifically addresses the anxiety of the Legislature in ensuring that the tenant is not dispossessed of the land on the spacious plea that the tenant voluntarily surrendered the land. The proviso to section 15(1), ordains in emphatic terms that the voluntarily surrender by the tenant shall be in writing, and verified before the Mamlatdar in the prescribed manner. Conversely, section 29(2) injuncts the landlord from obtaining possession of the land held by the tenant except under an order of the Mamlatdar. Evidently, it is not the claim of the landlord that, in the case at hand, the tenant had surrendered the possession of the suit lands in conformity with, and observance of, the provisions contained in sections 15 and 29 of the Act, 1948.

29. A useful reference in this context can be made to a judgment of a three-Judge Bench of the Supreme Court in the case of ***Babu Parasu Kaikadi (Dead) By LRs. Vs. Babu (Dead) through LRs.***¹⁰. In the said case, the jural relationship between

10 (2004) 1 SCC 681

the parties thereto as the landlord and tenants was not disputed. It was also not disputed that the tenants therein had voluntarily surrendered the land to the landlord; however, the said surrender was not in terms of sections 15 and 29 of the Act. The Supreme Court, in the light of the aforesaid facts, considered the question, “whether the voluntary surrender which is not in terms of sections 15 and 29 is a valid one?” After advertng to the provisions contained in sections 15 and 29 of the Act, 1948, the Supreme Court expounded the legal position as under :-

“5 The said Act, therefore, contemplates termination of tenancy by surrender thereof; and consequent taking over possession by the landlord. How such termination of tenancy could take place is provided for in Section 15 of the Act in terms whereof inter-alia a surrender of the tenancy becomes a legal one only when such surrender is in writing and verified before the Mamlatdar in the prescribed manner. For the said purpose the Mamlatdar is also required to hold an enquiry. It is not in dispute that purported surrender made by the predecessor-in-interest in favour of the respondents herein was although considered to be voluntary but the same did not satisfy the very legal requirement, contained in Section 15 of the Act.

6 Section 29 of the Act, as noticed hereinbefore, postulates taking over of possession by the landlord from the tenant only in accordance with procedure prescribed therefor. In the event, the surrender made by the predecessor-in-interest of the appellant in favour of the respondent is found to be invalid; the possession thereof obtained by the later pursuant to or in furtherance thereof shall also be invalid. In such an event, although the landlord takes a physical possession of the land, the

right to possess them same remains with the tenant. He could recover possession of the said land in accordance with law. The said Act is a beneficent statute. It should be construed in favour of the tenant and against the landlord. The protection given to the tenant in terms of the said Act must be given full effect. So construed, the expression 'possession' would also include right of possession. The view which we have taken is fortified by the decisions of this Court in Ramchandra Keshav Adke (dead) by Lrs & Ors. v. Govind Joti Chavare & Ors., [1975] 1 SCC 559; [Bhagwant Pundalik & Anr. v. Kishan Ganpat Bharaskal & Ors.](#), [1971] 1 SCC 15 and in Abdul Ajij Shaikh Jumma & Anr. v. Dashrath Indas Nhavi & Ors., AIR (1987) SC 1626 and thus the consistent view had been that the surrender by the tenant for being legal must be in conformity with the provisions contained in Sections 15 and 29 of the Act."

(emphasis supplied)

30. In the backdrop of the aforesaid clear and explicit enunciation of the legal position, and the express mandate of the provisions contained in section 15 and 29 of the Act, 1948, the learned Member, MRT was not at all justified in recording the finding on the basis of a lame claim of voluntary surrender of the suit lands by the original tenant, without anything more. It is more so for the reason that the tenant has been claiming that the landlord unlawfully dispossessed him of the suit lands.

31. This propels me to the aspect of the tenability of the proceedings under section 84 of the Act, 1948 for restoration of the possession of the suit lands. It bears repetition to note that

the landlord obtained a certificate under section 88-C of the Act, 1948 on 10th July 1962. The landlord, concededly, did not terminate the tenancy under section 33-B of the Act, followed by an application for possession of the land within the stipulated period. On the contrary, the application filed by the landlord seeking a negative declaration under section 70(b) of the Act came to be dismissed by the ALT. In these circumstances, could the tenant resort to the provisions contained in section 84 of the Act, 1948, alleging dispossession from the suit land at the hands of the certified landlord otherwise than in accordance with the provisions of the Act, 1948?

32. Unfortunately, the learned Member, MRT did not advert to this crucial question. The validity of the order passed by the Sub-Divisional Officer could have been lawfully examined by the MRT, on this count.

33. Shri Pai, the learned counsel for the respondents placed a strong reliance upon a three-Judge Bench judgment of the Supreme Court in the case of **Vallabbhai Nathabhai Vs. Bai**

Jivi & Ors.¹¹, wherein the distinction between the provisions contained in sections 29 and 84 of the Act, was illuminatingly postulated. It was, *inter-alia*, observed that in the case of a surrender which is not valid and binding on the tenant there is no termination of tenancy, and, therefore, the landlord is not entitled to retain the land even though possession thereof has been handed over to him or has been voluntarily taken by him. The position in such a case is that the tenant has a right to apply to the Mamlatdar for restoration of possession to him claiming that there has been no termination of tenancy, that his possession continues to be protected by the provisions of the Act and that, therefore, possession should be restored to him. Such an application lies under Section 29(1) and, when so made, it becomes the duty of the Mamlatdar under Section 70, Clause (n) read with Section 29(1) to put the tenant in possession of the land in question "under this Act". In such a case the tenant is claiming possession under the provisions of the Act and not on the strength of his own title, as when he applies for possession, against a trespasser.

11 AIR 1969 SC 1190

34. The Supreme Court considered a further question as to whether a tenant who has a remedy under Section 29 (1) can still apply to the Collector under Section 84. In other words, whether the Legislature has provided alternative remedies under both the sections to such a tenant, the Court answered the question observing, *inter-alia*, as under :-

“6 The words “any person unauthorisedly occupying or wrongfully in possession of any land” in Section 84, no doubt, are words of wide import and would include a landlord who is in unauthorised occupation or is wrongfully in possession. A landlord who under an invalid surrender is in possession of the land is, no doubt, a person in unauthorised occupation or is wrongfully in possession. But then Section 84 in express terms limits its application to three types of cases only, namely of a person unauthorisedly occupying or Wrongfully in possession of the land (a) the transfer or acquisition of which etc. is invalid under the Act, or (b) the management of which has been assumed under the Act, or (c) to the use and occupation of which he is not entitled under the provisions of the Act and the said provisions do not provide for the eviction of such person.

7 Clause (a) therefore, applies to transfers or acquisitions which are in breach of the provisions of Ch. V and possession or occupation whereof has been obtained under such invalid transfers or acquisitions. That being the position, the instant case would fall only under Clause (c) and not under Clause (a) as contended by Mr. Bhandare, and therefore, the condition that Section 84 would only apply to cases for which there is no other remedy under any of the provisions of the Act must apply to the present case. This condition shows that while giving drastic powers of summary eviction to an administrative officer the legislature was careful to restrict this power firstly because the result otherwise would be to deprive the person evicted under Section 84 of his remedy of appeal before the Collector which he would have if the order were to be passed under

Section 29 (1) and secondly, because it would enable a tenant to by-pass a judicial inquiry by the Mamlatdar under Section 29 (1) by directly applying to the Collector under Section 84. Such a result could not have been intended by the legislature. Therefore, the contention that Sections 29 (1) and 84 provide alternative remedies and a choice to the tenant cannot possibly be correct.”

(emphasis supplied)

35. Per contra, Mr.Thorat, the learned counsel for the petitioners urged that the provisions contained in section 29 do not govern a case wherein an erstwhile tenant becomes a deemed purchaser on Tiller's day. In case of dispossession of such a tenant an application under section 84 of the Act, is tenable. Since the jural relationship between the landlord and tenant ceases, the only remedy available to such tenant is to invoke the provisions contained in section 84 of the Act, submitted Mr. Thorat.

36. In order to lend support to this submission, Mr.Thorat banked upon the judgments of this Court in the cases of **Vithoba Ram Rahane & Anr. Vs. Bhalchandra Sadashiv Joshi since deceased by heir & Others.¹², Shankar Savala**

12 1993 Mh. L.J. 419

Gurav Vs. Bala Govinda Patil ¹³, and ***Maruti Ramaji Patil Vs. Babu Dhondi Mohite & Ors.*** ¹⁴.

37. As observed earlier, the questions as to whether the jural relationship between the deceased landlord and the deceased tenant came to an end on the Tiller's day and the tenant could have invoked the powers of the Collector under section 84 of the Act on the premise that he was not claiming under the provisions of the Act, have not been examined by the learned Member, MRT. The consequences of grant of the certificate under section 88-C and non-termination of tenancy under section 33-B of the Act were also not adverted to. These issues constituted the core controversy. On the contrary, instead of posing unto himself the pertinent questions which arose for consideration, the learned Member, MRT proceeded to decide the matter by delving into factual aspects.

38. The aforesaid circumstances cumulatively dissuade this Court from examining the aforesaid issues, for the first time, in exercise of extraordinary jurisdiction under Article 227 of the Constitution of India.

13 2003(Supp,2) Bom. C.R.57

14 2006(4) Bom. C.R. 498

39. I am conscious of the time-lag. However, in view of the perfunctory manner in which the learned Member, MRT has rendered the impugned order, there is no other go but to remit the matter back to the learned Member, MRT for a fresh consideration. It would, therefore, be necessary to remit the matter to MRT for a fresh consideration and decision, firstly, on the application for condonation of delay and, thereafter, in the event the delay is condoned, on the merits of the matter, in the light of aforesaid observations.

40. For the foregoing reasons, the petition deserves to be partly allowed. Hence, I pass the following order :-

- (i) The petition stands partly allowed.
- (ii) The impugned order dated 20th October 1994 passed by the learned Member, MRT stands quashed and set aside.
- (iii) The revision application No. MRT.NS.VI.1/91, and the application for condonation of delay stand restored to the file of MRT, Pune.

(iv) The learned Member, MRT shall decide afresh, firstly, the application for condonation of delay in preferring the revision application, and, in the event the delay is condoned, decide the revision application on merits, after providing an opportunity of hearing to the concerned parties, as expeditiously as possible and preferably within a period of six months from the date fixed for the appearance of the parties before MRT.

(v) Parties shall appear before the MRT, Pune on 16th September 2019 and it shall not be necessary to issue a fresh notice to the parties for appearance before the MRT.

(vi) Record and proceedings be sent back to MRT, Pune forthwith.

(vii) Rule made absolute in the aforesaid terms.

[N. J. JAMADAR, J.]