

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8301 OF 2025

Late Bapurao @ Bapusaheb Maruti Mane
(since deceased) through LRs. and ors.

...Petitioners

Versus

Shree Govardhan Sanstha Vai-Pune-
Mumbai and ors.

...Respondents

WITH

WRIT PETITION NO. 8300 OF 2025

Late Natusaheb Bapusaheb Mane (since
deceased) through LRs. and ors.

...Petitioners

Versus

Shree Govardhan Sanstha Vai-Pune-
Mumbai and ors.

...Respondents

Mr. Rushikesh Barge, for the Petitioners in both WP.

Mr. Sandeep Parikh, a/w Prabhakar Jadhav and Suchita
Chavan, for Respondent Nos.1 to 3 in both WP.

Mr. Prosper D'Souza, for Respondent Nos.4A to 4D and 5A to
5F in both WP.

Mr. Surel Shah, Senior Advocate, a/w Shailesh Chavan,
Manmath Athalye, Sachin Pawar, Hrishikesh Avhad, for
Respondent No.6.

CORAM: N. J. JAMADAR, J.

DATED: 3rd JULY, 2025

Order:-

1. Heard the learned Counsel for the parties.
2. The petitioners, who are the successors in interest of Maruti Hari Mane, who was cultivating the subject land as a tenant, since 1949 – 1950, have preferred these petitions

aggrieved by two orders passed by the Maharashtra Revenue Tribunal (“MRT”).

3. In WP/8301/2025, the petitioners assail the legality, propriety and correctness of a judgment and order dated 15th May, 2025 passed by MRT in Revision Application No.NS/I/02/2025, whereby the revision preferred by the petitioners against a judgment and order dated 8th January, 2025, passed by the Sub-Divisional Officer dismissing the appeal preferred by the petitioners and affirming the order passed by the Mamlatdar/Agricultural Land Tribunal, Satara, in Tenancy Application No.2 of 2020, directing the eviction of the petitioners from the subject land and delivery of possession thereof to respondent No.1, the landlord.

4. In WP/8300/2025, the petitioners assail an order passed by the MRT on 15th May, 2025 in Application No.24 of 2024, whereby the application filed by the petitioners for condonation of delay of about 65 years in preferring revision against an order dated 23rd December, 1959 passed by the Collector granting certificate of exemption to respondent No.1 Trust under Section 88B of the Maharashtra Tenancy and Agricultural Land Act, 1948 (“the MT&AL Act, 1948”) came to be rejected.

5. Respondent No.1 is a Public Charitable Trust registered under the Maharashtra Public Trust Act, 1950, on 25th March, 1953. The subject land is registered as the trust property of respondent No.1. Respondent No.1 runs *Gaushala*. Respondent No.1 Trust has obtained the certificate of exemption under Section 88B of the MT&AL Act, 1948, on 23rd December, 1959 as the entire income of the subject land which is the property of respondent No.1 Trust has been appropriated for running the *Gaushala* and the purposes of respondent No.1 Trust.

6. Respondent No.1 filed Tenancy Application No.2 of 2020 purportedly under Sections 14 and 29 of the MT&AL Act, 1948, seeking termination of the tenancy and recovery of possession of the subject land. By an order dated 16th April, 2024, the ALT allowed the application observing *inter alia* that the tenants had committed default in payment of rent and also breached the conditions of tenancy.

7. The petitioners carried the matter in appeal. By a judgment and order dated 8th January, 2025, the SDO dismissed the appeal observing *inter alia* that respondent No.1 Trust had obtained certificate under Section 88B and in a proceeding, being Tenancy Case No.हु.नं./३२ग/हु.नं.९७, decided by an order dated 31st January, 1967, the ALT had exempted the

subject land from the purview of the provisions of the MT&AL, 1948 and declined to determine the purchase price under Section 32G of the MT&AL Act, 1948. Thus, the tenant(s) had no right to purchase the subject land and in view of the provisions contained in Section 88B of the MT&AL Act, 1948, the restrictions contained in Sections 14, 25 and 29 were not attracted.

8. In the revision, MRT found no infirmity in the order passed by the Sub-Divisional Officer. Neither there was substantial defect in the procedure nor the order of the Collector was contrary to the provisions of law, ruled MRT.

9. The petitioners simultaneously approached MRT seeking condonation of delay in assailing the order dated 23rd December, 1959 passed by the Collector granting certificate under Section 88B of MT&AL Act, 1948, asserting, *inter alia*, that the petitioners gained knowledge about the exemption certificate under Section 88B on 25th April, 2024, when a photostat copy of the said certificate was obtained by the petitioners in the appeal proceedings. Thus, the delay in challenging the said order be condoned.

10. By the impugned order, the MRT declined to condone the delay of about 65 years as the material on record indicated that

the petitioners had known about the said certificate at a much earlier point of time. Thus, there was no sufficient cause to condone the inordinate delay.

11. Being aggrieved, the petitioners have invoked the writ jurisdiction.

12. Mr. Barge, the learned Counsel for the petitioners, would submit that the authorities have proceeded on an incorrect premise that once the certificate under Section 88B is obtained the tenant loses all protections under the MT&AL Act, 1948. It was submitted that the proceedings to terminate the tenancy and regain possession of the subject land was incompetent and untenable as three months prior notice envisaged by Section 14(1)(b) was not given to the tenants. Nor the authorities adverted to the provisions contained in Section 25 of the MT&AL Act, 1948 which provides for relief against termination of tenancy for non-payment of rent.

13. Mr. Barge made a strenuous effort to urge that despite the grant of certificate under Section 88B of the MT&AL Act, 1948 mandatory provisions contained in Sections 14 and 25 are required to be complied with. An endeavour was also made by Mr. Barge to submit that the order granting certificate under Section 88B was of no avail to respondent No.1 as the

predecessor-in-title of the petitioners became deemed purchaser on the Tiller's day. Reliance was sought to be placed on a judgment of a learned Single Judge of this Court in the case of *Kondiba Laxman Hanmar since deceased by his legal heirs Baburao Kondiba Hanmar and anr. vs. Krishnarao Anandro Dalavi deceased by his legal heirs Radhabai Krishnarao Dalavi and ors.*¹, wherein it was enunciated that if the public trust had acquired the land after 1st April, 1957 exemption certificate in relation to such property cannot be granted.

14. On the aspect of delay in assailing the order granting the certificate under Section 88B, Mr. Barge attempted to persuade the Court to hold that the material on record does not indicate that the petitioners had the knowledge of the said certificate.

15. Mr. D'Souza, the learned Counsel for respondent Nos.4A to 4D and 5A to 5F, adopted the submissions of Mr. Barge.

16. Mr. Parikh, the learned Counsel for respondent Nos.1 to 3, stoutly resisted the submissions on behalf of the petitioners. Mr. Parikh would urge the submissions on behalf of the petitioners that the provisions contained in Sections 14 and 25 of the MT&AL Act, 1948 would govern the subject land despite the grant of certificate under Section 88B is against the plain

1 2004 SCC OnLine Bom 522.

language of Section 88B. Mr. Parikh took the Court through the pleadings in the previous proceedings and the orders passed by the authorities under the MT&AL Act, 1948 to demonstrate that the petitioners had full knowledge about the grant of the certificate under Section 88B and, yet, had the audacity to urge that they came to know about the certificate on 25th April, 2024.

17. Mr. Surel Shah, the learned Senior Advocate for respondent No.6, supplemented the submissions of Mr. Parikh. Mr. Shah urged that the fact that the Mamlatdar/ALT had referred to an incorrect provision does not detract materially from the legality and validity of the order of eviction. Under the provisions of Section 70(n), the Mamlatdar/ALT has the power to order that landlord be put in possession of the land. Therefore, the petitions do not deserve to be entertained.

18. The provisions contained in Section 88B, on the construction of which, the rival submissions revolved, read as under:

“88B. Exemption on certain provisions to land of local authorities, universities and trusts:

[(1)] Nothing in the foregoing provisions except sections 3, 4B, 8, 9, 9A, 9B, 9C, 10, 10A, 11, 13 and 27 and the provisions of Chapters VI and VIII in so far as the provisions of the said Chapters are applicable to any of the matters referred to in the sections mentioned above, shall apply,-

(a) to lands held or leased by a local authority, or University established by law in the [Bombay area of the State of Maharashtra]; and

(b) to lands which are the property of a trust for an educational purpose, [a hospital, Panjarapole, Gaushalal] or an institution for public religious worship:

Provided that,-

(i) such trust is or is deemed to be registered under the Bombay Public Trusts Act, 1950; and

(ii) the entire income of such lands is appropriated for the purposes of such trust;

[(c) to lands assigned or donated by any person before the 1st day of August 1956 for the purpose of rendering any of the following services useful to the community, namely:-

maintenance of water works, lighting or filling of water troughs for cattle;]

[(d) to lands taken under management temporarily by the Civil, Revenue or Criminal Courts by themselves, or through receivers appointed by them, till the decision of the title of the rightful holders:

Provided that, from the date on which the land referred to in clause (d) is released from management, all the foregoing provisions of this Act shall apply thereto; but subject to the notifications that in the case of a tenancy, not being a permanent tenancy, which on that date subsists in the land,-

(i) the landlord shall be entitled to terminate the tenancy under section 31 (or under section 33B in the case of a certificated landlord) within one year from such date; and

(ii) within one year from the expiry of the period during which the landlord or certificated landlord is entitled to terminate the tenancy as aforesaid, the tenant shall have the right to purchase the land under section 32 (or under section 33-C in the case of an excluded tenant); and

(iii) the provisions of sections 31 to 31-D, (both inclusive) (or sections 33-A and 33-B in the case of a certificated landlord) and sections 32 to 32-R, (both inclusive) (or sections 33-A and 33-C in the case of an excluded tenant) shall, so far as may be applicable, apply to the termination of a tenancy or the right to purchase the land, as aforesaid:

Provided further that,-

(a) in the case of a permanent tenancy the permanent tenant shall be entitled to purchase the land held by him on permanent tenancy,-

(i) within one year from the date on which the estate or land is released from management, or

(ii) where such estate or land was released from management after the tillers' day but before the commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1960, within one year from such commencement, and

(b) where such permanent tenant is desirous of exercising the right conferred on him under this proviso, he shall accordingly inform the landlord and Tribunal in the prescribed manner within the said period of one year and the provisions of sections 32 to 32-R shall, so far as may be applicable, apply to the right of the permanent tenant to purchase the land.]

[(2) For the purposes of this section, a certificate granted by the Collector, after holding an inquiry, that the conditions in the proviso to sub-section (1) are satisfied by any trust shall be conclusive evidence in that behalf].”

19. On a plain reading of the aforesaid text of Section 88B, the submissions of Mr. Barge that the provisions contained in Sections 14 and 25 of MT&AL Act, 1948 did attract despite the grant of certificate under Section 88B(2) of the MT&AL Act, 1948 is unworthy of countenance. Section 88(1) begins with the expression, “Nothing in the foregoing provisions”, which has a negative import. Only the provisions contained in Sections 3, 4B, 8, 9, 9A, 9B, 9C, 10, 10A, 11, 13 and 27 and the provisions of Chapters VI and VIII in relation to any of the matters referred to in the aforementioned sections, are saved from the negative import. In view of clear and explicit negative import, the other provisions of the Act, 1948, apart from the saved provisions, do not become applicable to the lands owned by the public trust covered under clause (b) of sub-section (1) of Section 88B.

20. In the instant case, it is pertinent to note that the exemption certificate under Section 88B has been given effect to in the sense that in the proceedings instituted by the tenant(s)

for determination of purchase price under Section 32G of the Act, 1948 were rejected holding that the subject land was exempted from the operations of the provisions of the MT&AL Act, 1948, twice. Firstly, in the year 1967, by a judgment and order dated 31st January, 1967 in Tenancy Case No. कृका/32ग/हु. नं.97 pursuant to which Mutation Entry No.2248 was effected. Second by judgment and order dated 20th July, 2020 in Tenancy Case No.1/2018 instituted by the petitioners.

21. It would be contextually relevant to note that in the reply to the later application, under Section 32G of the MT&AL Act, 1948, it was categorically mentioned by respondent No.1 that on 23rd December, 1959 exemption certificate under Section 88B was granted to respondent No.1 Trust and the ALT also referred to the said fact in the order dated 20th July, 2020.

22. In the face of these orders, I find substance in the submission of Mr. Parikh that the petitioners have demonstrated litigative disingenuity in approaching the MRT with a case that they came to know about the certificate under Section 88B only upon obtaining a photostat copy thereof in the appeal proceedings on 25th April, 2024. Mr. Barge attempted to salvage the position by canvassing a submission that the petitioners were not provided certified copy of the exemption certificate

despite repeated request. This submission, also does not merit countenance. There are multiple documents which show that the factum of grant of exemption certificate was within the knowledge of the petitioners and their predecessor-in-title at a much prior point of time and, at least, on the date the judgment in Tenancy Case No. ६.नं./३२ग/६.नं.९७, dated 31st January, 1967

23. It is true, ALT professed to pass the order under Section 14 of the MT&AL Act, 1948 and also made an incorrect observation that the predecessor-in-title of the petitioners and the petitioners failed to establish that they were the tenants of the suit land. However, the fact that there was a clear reference to the grant of exemption certificate under Section 88B in the application and the Appellate Authority as well MRT have considered the legal import of the grant of exemption certificate and, conversely, the orders passed by the ALT declining to determine the purchase price under Section 32G in view of the exemption of the land from the purview of the said provision of the MT&AL Act, 1948, the reference to an incorrect provision and observation against the weight of the record may not vitiate the ultimate order, if it can be sustained on other grounds.

24. A profitable reference in this context can be made to a judgment of the Supreme Court in the case of *J. Kumaradasan*

Nair and Anr. vs. Iric Sohan and ors.² wherein the following observations were made:

“18. It is also now a well-settled principle of law that mentioning of a wrong provision or no-mentioning of any provision of law would, by itself, be not sufficient to take away the jurisdiction of a court if it is otherwise vested in it law. While exercising its power, the court will merely consider whether it has the source to exercise such power or not.”

25. The conspectus of the aforesaid consideration is that MRT was justified in dismissing the revision application as well as in rejecting the application for condonation of delay in preferring the revision against the order granting certificate under Section 88B especially in view of the fact that the petitioners sought the condonation of delay by approaching the Tribunal with a case that they came to know about the certificate under Section 88B on 25th April, 2024, which was demonstrably false.

26. A useful reference can be made to the judgment of the Supreme Court in the case of **Esha Bhattacharjee Vs Managing Committee of Raghunathpur Nafar Academy & Ors,**³ wherein the following principles were *inter alia* enunciated.

“21.

21.4 (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5 (v) Lack of *bona fides* imputable to a party seeking condonation of delay is a significant and relevant fact.

2 (2009) 12 SCC 175.

3 (2013) 12 SCC 649.

... ..

21.9 (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10 (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.”

27. Thus, no interference is warranted in either of the orders.

28. The petitions, therefore, stand dismissed.

[N. J. JAMADAR, J.]