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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13496 OF 2016

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1. **Shankar Ganpat Salunke**, deceased
through his legal heirs
- 1A. **Gopika Shankar Salunke**
- 1B. **Narendra Shankar Salunke**
- 1C. **Vijay Shankar Salunke**
- 1D. **Ganesh Shankar Salunke**
- 1E. **Ratnaprabha Badrinath Kale**
- 1F. **Kalpana Namdeo Raut**
- 1G. **Archana Kashinath Raut** ... **Petitioners**

Vs.

1. **Laxmibai Shankar Kavitate**, deceased
through her legal heirs
- 1A. **Ganpat Sitaram Kavitate**
- 1B. **Namdeo Sitaram Kavitate**, since
deceased through his legal heirs
- 1B(A) **Vimal Namdeo Kavitate**
- 1B(B) **Dhananjay Namdeo Kavitate**
- 1B(C) **Yeshwant Namdeo Kavitate**
- 1B(D) **Swati Vijay Dhakle** ... **Respondents**

Mr. Anil Anturkar, Senior Advocate with Mr. Sugandh B. Deshmukh for the Petitioners.

Mr. Drupad S. Patil with Mr. Parag Tilak for the Respondents.

CORAM : AMIT BORKAR, J.
RESERVED ON : SEPTEMBER 21, 2026.
PRONOUNCED ON : SEPTEMBER 29, 2026

JUDGMENT:

1. By the present Writ Petition filed under Articles 226 and 227 of the Constitution of India, the Petitioners are challenging the legality, validity, and correctness of the Judgment and Order dated 13 October 2016 passed by the Member, Maharashtra Revenue Tribunal, Pune Bench, Pune in Revision No. P/III/4/2015.

2. The facts which have given rise to the present Writ Petition are as follows. The land bearing Survey No. 710/8, admeasuring 2 H. 90 R., situated at Indapur, was originally owned by Smt. Laxmibai Kavitate. Bhiku Shankar Deshmukh was the tenant of the said land even before the Tiller's Day. His name was recorded as an "Ordinary Tenant" in the other rights column by Mutation Entry No. 920 dated 8 September 1955. On the Tiller's Day, Laxmibai was a widow. Therefore, the Tiller's Day stood postponed as provided under Section 32(F) of the Bombay Tenancy and Agricultural Lands Act. This fact was recorded in the revenue record by Mutation Entry No. 1533 dated 27 November 1961. Thereafter, on 19 February 1963, Laxmibai filed Tenancy Application No. 61 of 1962 under Section 33(B) read with Section 29(2) of the Bombay Tenancy and Agricultural Lands Act, 1948 before the Awal Karkoon, Indapur. By the said application, she sought possession of half portion of the land for her personal cultivation. The application was allowed on 19 February 1963 and

the tenant was directed to hand over possession of 4 Acres and 3 Gunthas. In the year 1966, Laxmibai obtained possession of 4 Acres and 3 Gunthas. Her name was recorded in the cultivation column of Form No. 12 in respect of that portion. She cultivated Jwari and Kardi on the said land. From 1966 till 1973, possession of the said 4 Acres and 3 Gunthas remained with Laxmibai and she cultivated the land herself. Accordingly, her name continued to be shown as the cultivator in Extract No. 12. In the year 1973-74, Laxmibai agreed to sell the said portion of 4 Acres and 3 Gunthas to one Govind Laxman Thorat. Accordingly, on the application made by Laxmibai, the name of Thorat was entered in the crop and tenancy column for the year 1973-74. On 21 June 1973, Shankar Salunkhe made an application requesting that his name be recorded in the cultivation column. The said application is referred to in the Order dated 24 July 1975. Shankar Salunkhe claimed that he was in possession of the land on Batai basis. After making an inquiry, the Circle Officer passed an Order dated 8 February 1974. It was found that possession of the land was with Shankar Salunkhe. The Circle Officer directed that his name be recorded in the cultivation column. Laxmibai challenged the said order by filing the first RTS Appeal before the Sub-Divisional Officer, Baramati. The appeal was allowed on 24 July 1975. The order passed by the Circle Officer was set aside and the Sub-Divisional Officer directed that the name of Laxmibai be entered. Laxmibai died in the year 1975 and had left a Will in favour of the Respondents. Shankar Salunkhe filed II Appeal No. 32 of 1975 before the Additional Collector, Pune. The said appeal was

dismissed by Order dated 23 February 1976.

3. Shankar Salunkhe filed an RTS Revision before the Additional Commissioner, Pune, being RTS No. 611. By Order dated 6 April 1977, the revision was allowed. The Additional Commissioner recorded, amongst other things, the following findings: (i) "From Evidence on record it is quite clear that Applicant is in possession of suit land"; (ii) Opponent No. 2, namely Thorat, had not produced the Agreement on record and his claim of possession could not be accepted; (iii) the Additional Collector had unmixd the issues arising in RTS proceedings with the provisions of the BTAL Act; (iv) in RTS proceedings, the question of possession of the person concerned was relevant, and it was not possible to advise the parties to proceed under another Act in such proceedings; and (v) the Applicant was in possession of the suit land. On these findings, the orders passed by the Sub-Divisional Officer and the Additional Collector were set aside.

4. The daughters of Laxmibai filed Special Civil Application No. 1376 of 1977 before this Court, challenging the Order of the Additional Commissioner. By Order dated 22 June 1981, this Court observed that the matter concerned entries in the lower part of the Record of Rights and that the finding regarding possession had been recorded by the competent authority. Therefore, no interference was found necessary. It was observed that the daughter of Laxmibai could file a civil suit for declaration of her title so that appropriate entries could be made in the upper part of the Record of Rights. It was observed that the Petitioner was not concerned with the upper part of the Record of Rights and could

not insist upon filing such a suit. The names of Laxmibai's nephews, namely Ganpat Sitaram Kavitake and Namdeo Sitaram Kavitake, were entered in the 7/12 extract in respect of the concerned portion of the land on the basis of Laxmibai's Will dated 15 March 1974. The said entry was made by Mutation Entry No. 14299 dated 25 May 1976 and was certified on 30 June 1976. Laxmibai died in the year 1975. The Civil Judge, Senior Division, Pune granted probate of the said Will in Miscellaneous Application No. 592 of 1976 by Order dated 30 June 1978.

5. Thereafter, a settlement took place between Laxmibai's nephews and Bhiku Deshmukh, who was the tenant. Under the settlement, a portion admeasuring 1 H. 23 R. was sold to Bhiku Deshmukh and the remaining land admeasuring 1 H. 65 R. was retained by Laxmibai's nephews. Accordingly, Mutation Entry No. 16330 was made on 28 November 1983 and was certified on 16 January 1984. The original Survey No. 710/8 was divided. The portion sold to Bhiku Deshmukh was given Survey No. 710/8A, whereas the portion retained by Laxmibai's nephews was given Survey No. 710/8B. The land bearing Survey No. 710/8B, admeasuring 1 H. 65 R., is the land which is the subject matter of the present litigation. Laxmibai's nephews filed Tenancy Application No. 05 of 2013 under Section 84(c) of the BT & AL Act before the Sub-Divisional Officer, Baramati. The application was filed against the legal representatives of Shankar Ganpat Salunkhe. It was their case that Shankar Salunkhe was in wrongful possession of the suit land which belonged to Laxmibai and that, after his death, his legal representatives had continued in such

wrongful possession. They contended that there was no relationship of landlord and tenant between Laxmibai and Shankar Salunkhe. According to them, the entry of Shankar Salunkhe on the land was without any title. On this basis, they sought an order directing delivery of possession of the suit land. An affidavit was filed in support of the application. The legal representatives of Shankar Salunkhe opposed the application. They contended, amongst other things, that they were in possession of the suit land. They pointed out that the daughters of Laxmibai had not been made parties to the proceedings. According to them, this Court had held that Shankar Salunkhe was in possession of the suit land. They contended that the daughters of Laxmibai had not filed the civil suit referred to by this Court in Special Civil Application No. 1376 of 1977. It was contended that the application filed under Section 84(c) was barred by limitation. Laxmibai's nephews filed an Evidence Affidavit in support of their case.

6. In the year 2015, the Sub-Divisional Officer, Baramati rejected the application. The Sub-Divisional Officer held that the application had been filed after about 33 years and that it was not filed within three years as contemplated by Article 58 of the Limitation Act. The application was held to be barred by limitation. Laxmibai's nephews filed a Revision Application under Section 76 of the BT & AL Act before the Maharashtra Revenue Tribunal, Pune, being Revision Application No. P/III/4/2015. The Member, MRT, held that the legal representatives of Shankar Salunkhe had not pleaded that they were tenants. It was held that they had not raised any plea of tenancy by seeking a declaration

under Section 70(b) of the BT & AL Act. The Member observed that mere continuation of an entry showing a person as a possessor would not give that person any legal right to continue in possession. The Member held that, on the basis of the probate of the Will of Laxmibai, the cousins were the owners of the land. According to the Member, the entry showing the name of Shankar Salunkhe did not create any interest in his favour or in favour of his legal representatives. The Member considered the mode of cultivation shown against the name of Shankar Salunkhe as "O" and held that the 7/12 extract did not disclose any valid source of interest or possession in the suit land. The Member held that no period of limitation was prescribed for an application under Section 84(c). Therefore, according to the Member, the finding of the Sub-Divisional Officer regarding limitation did not get support from the provisions of Section 84(c). On these findings, the Revision Application was allowed and the legal representatives of Shankar Salunkhe were directed to hand over possession of the suit land to Laxmibai's nephews.

7. The legal representatives of Shankar Salunkhe have filed the present Writ Petition. They contend, amongst other things, that they are in possession of the suit land, as was held by this Court in Special Civil Application No. 1376 of 1977. According to them, the Maharashtra Revenue Tribunal ought not to have reopened or reconsidered that issue. They contend that, in any event, the maximum period of limitation applicable to the claim is three years and the application under Section 84(c) filed after such a long period was barred by limitation. It is their contention that the

application under Section 84(c) was not maintainable. According to them, while exercising revisional jurisdiction under Section 76 of the BT & AL Act, the Maharashtra Revenue Tribunal could not exercise jurisdiction in the manner of a Court exercising powers under Section 100 of the Code of Civil Procedure.

8. Mr. Anturkar, learned Senior Advocate appearing for the Petitioners, submitted that although Section 84C of the Maharashtra Tenancy and Agricultural Lands Act, 1948 ("the MTL Act") does not prescribe any period of limitation, the power under the said provision cannot be exercised after an unreasonable delay. According to him, the principles of delay, laches and negligence can still apply. A statutory authority cannot exercise its power after an unlong and unexplained period, particularly where, because of the delay, rights have become settled, possession has continued for a long time, or serious prejudice has been caused to the other side. He submitted that if the principle of laches can apply even to a Court having wide powers and not being governed by any particular period of limitation, then the same principle must apply with greater force to a revenue authority such as the Collector, whose powers are limited by the statute. According to him, the Collector cannot exercise the statutory power at any point of time without considering the delay, conduct of the parties, prejudice caused or rights which may have been created during the intervening period.

9. Mr. Anturkar submitted that the principles of laches and negligence may apply even when the Supreme Court exercises its inherent power to do substantial justice under Article 141 of the

Constitution of India. In support of this submission, reliance was placed on the judgment of the Supreme Court in *Shyamo Devi and Others v. State of U.P.*, 2024 SCC OnLine SC 966, as well as the judgment reported in *Satyam Sahu*, (2004) 8 SCC 340. Reliance was placed upon the judgment of the Supreme Court in *Ibrahimpatanam Taluk Vyawasayik Coolie Sangam v. K. Suresh Reddy*, reported in (2003) 7 SCC 667.

10. Learned Senior Advocate submitted that the question whether limitation is inapplicable to proceedings under Section 84C requires reconsideration. According to him, although at least three Division Benches of this Court have taken the view that the provisions of limitation do not apply to proceedings under Section 84C of the MTL Act, the correctness and extent of that proposition requires reconsideration. The three judgments of this Court relied upon by the Petitioners are *Ganesh and Another v. Kushal Rao and Others*, 2023 SCC OnLine Bom 2623; *Hasan bin Salam, Salam bin Abdul Habib v. Madhavrao Rangnathrao Shinde*, 2014 SCC OnLine Bom 4617; and *Ghanashyamprasad Narwarlal Bhatta v. Gendal Singh Vakhat Singh*, Special Civil Application No. 764 of 1955, which has been referred to in paragraph 12 of the judgment in *Ganesh and Another*.

11. According to the learned Senior Advocate, the question is not only whether the Limitation Act applies to proceedings under Section 84C. The larger question is whether a statutory authority can start proceedings after an unreasonable and unexplained delay merely because the statute does not prescribe any period of limitation. The Petitioners have relied upon the observations made

by T.S. Thakur, J. in his concurring judgment in *Joint Collector, Ranga Reddy District and Another v. D. Narasing Rao and Others*, reported in (2015) 3 SCC 695. It was submitted that, particularly in view of the judgment of the Supreme Court in 2015 and the judgment in *Ibrahimpatanam Taluk Vyawasayik Coolie Sangam*, the question requires reconsideration by this Court. According to the Petitioners, these judgments have not been considered in the later judgment in *Ganesh and Another*.

12. The submission of the Petitioners is that the Supreme Court has held that where a statute gives a power to an authority but does not prescribe any period for exercising that power, the power must ordinarily be exercised within a reasonable period. What is a reasonable period would depend upon the nature of the subject matter, the nature of the right affected, the conduct of the parties and the prejudice caused because of the delay. Learned Senior Advocate submitted that the nature and source of jurisdiction under Section 84C requires consideration. According to him, it has to be examined whether the jurisdiction of the Collector under Section 84C is original and independent, permitting the Collector himself to decide whether a person in occupation is a trespasser or is otherwise in unauthorised possession. Alternatively, it has to be considered whether the jurisdiction is only consequential and can be exercised after the competent authority has decided the status of the person in occupation.

13. The question is whether the Collector, while acting under Section 84C, can himself decide disputed questions relating to title, possession, tenancy, adverse possession or the nature of the

occupation. According to the Petitioners, such questions may first have to be decided by the competent Civil Court. Where the dispute relates to tenancy, the question may have to be decided by the Mamlatdar, Tahsildar or other authority having jurisdiction under the BT & AL Act.

14. It was submitted that Section 84C cannot be understood as giving the Collector a wide power to decide complicated and seriously disputed questions relating to civil title or possessory title. According to the Petitioners, the provision has to remain within the purpose for which it has been enacted. It cannot be used as a substitute for a instituted civil suit. The Petitioners submitted that the jurisdiction of the Collector under Section 84C is limited because it is created by statute. According to them, this jurisdiction cannot include matters which belong to the Civil Court. These would include a claim of possessory title, a claim based upon long, settled and uninterrupted possession, a plea of adverse possession, a dispute regarding title or competing ownership rights, and a dispute as to whether a person is a trespasser where deciding that question requires a detailed examination of civil rights and evidence.

15. It was submitted that where the basis of the proceedings under Section 84C is disputed and depends upon deciding civil rights, the Collector cannot assume jurisdiction merely by describing the person in possession as an unauthorised occupant. According to the Petitioners, such a question must first be decided by the competent Civil Court unless the statute gives such adjudicatory power to the revenue authority and excludes the

jurisdiction of the Civil Court. It was submitted that if the jurisdiction under Section 84C is held to be both adjudicatory and executory and is not treated as limited, then the provision would come into conflict with Section 9 of the Code of Civil Procedure, which is a Central enactment. It is true that the Maharashtra Tenancy and Agricultural Lands Act has been placed in the Ninth Schedule to the Constitution of India. However, according to the Petitioners, the protection available under the Ninth Schedule is relevant in the context of certain challenges based on fundamental rights. It does not mean that the provisions of the MTL Act can be treated as overriding a Central enactment merely because they have been included in the Ninth Schedule.

16. Another question raised by the Petitioners concerns the relationship between Sections 84 and 84C of the BT & AL Act. According to the Petitioners, it requires consideration whether the power to resume or recover possession under Section 84 operates independently of Section 84C, or whether such power can be exercised only after the basic jurisdictional facts contemplated by Section 84C have been determined. The words "under the provisions of this Act" occurring in Sections 84 and 84C are submitted to be important. According to the Petitioners, if the dispute does not arise under the provisions of the MTL Act but arises under general law, such as the law relating to adverse possession or Section 27 of the Limitation Act, the Collector or Tahsildar exercising powers under Sections 84 or 84C would have no jurisdiction to decide that question. Such a question would fall within the jurisdiction of the Civil Court because it concerns title

and, in the case of adverse possession, the extinguishment of title. According to the Petitioners, Section 84C deals with the consequences of an invalid transfer or acquisition contrary to the provisions of the Act. Section 84, on the other hand, provides the machinery for enforcement and recovery of possession.

17. On this basis, the Petitioners submitted that the following questions arise for consideration: first, whether a prior adjudication under Section 84C is necessary before the coercive machinery under Section 84 can be used; second, whether the Collector can use Section 84 to dispossess a person without first deciding whether the transfer, acquisition, or occupation is under Section 84C; third, whether Section 84 is only an enforcement provision while Section 84C provides the substantive jurisdictional foundation; and fourth, whether Sections 84 and 84C have to be read together so that the Collector does not use Section 84 as an independent source of power to decide disputed questions of title and possession.

18. The Petitioners rely upon the earlier order of a Division Bench of this Court comprising Kanade, J. and Pendse, J. According to the Petitioners, that Division Bench had directed the Respondent to institute a Civil Suit for declaration and possession. It was submitted that once this Court had directed the Respondent to establish title and possession before the Civil Court, the Respondent could not avoid that direction by invoking revenue proceedings under Sections 84 or 84C of the BT & AL Act. According to the Petitioners, unless the Respondent obtains an appropriate declaration from the competent Civil Court, it cannot

obtain in through revenue proceedings the same relief which the earlier Division Bench had directed it to seek through a civil suit. The earlier order continues to bind the parties on the issues decided therein unless the said order is set aside or otherwise ceases to operate.

19. The Petitioners submitted that the scope of the Full Bench judgment requires consideration. According to them, the first question considered by the Full Bench appears to relate to whether the Collector, while exercising the relevant statutory jurisdiction, can decide a claim of tenancy made by a person in possession. It was submitted that this may not be the issue in the present case. According to the Petitioners, there is a finding that they are in possession of the subject property and they claim possessory title. Their case is not based upon a claim that they are tenants whose tenancy rights are required to be determined. The real dispute, according to them, is regarding possession, possessory title and the Respondent's claim to recover possession despite the earlier direction of this Court to seek declaratory relief before the Civil Court. Therefore, the Full Bench decision dealing with the Collector's power to decide a tenancy claim may not determine the controversy in the present case.

20. The Petitioners submitted that even if a question of tenancy is found to arise, another question regarding the proper interpretation of the statutory provisions remains. The MTL Act creates different authorities having different functions concerning tenancy and possession. Section 70 gives the Mamlatdar or the competent tenancy authority power to decide whether a person is

a tenant and whether that person has tenancy rights under the Act. Section 84 is in the nature of an enforcement provision and permits the competent revenue authority, where the statutory conditions are satisfied, to secure compliance with the Act and to recover or deliver possession. Section 84C deals with an inquiry into transfers or acquisitions which are alleged to be invalid or contrary to the Act and permits consequential orders after such inquiry. The question is whether these provisions can be used interchangeably or whether they have to operate in a particular statutory order. According to the Petitioners, if the basic question is whether a person is a tenant, that question should ordinarily be decided by the authority empowered under Section 70. The Collector cannot use Sections 84 or 84C to assume jurisdiction over a tenancy question which the Act has entrusted to the Mamlatdar or another competent tenancy authority.

21. According to the Petitioners, where the case is based upon an alleged invalid transfer or acquisition, the inquiry contemplated under Section 84C must first be completed before any consequential action for recovery of possession can be taken. Section 84 cannot be treated as an independent and unlimited power to dispossess a person when the legality of the transfer, the nature of possession or the tenancy status of that person is disputed and has not been decided. The provisions have to be read together. Section 70 deals with the question of tenancy status. Section 84C deals with prohibited or invalid transfers or acquisitions and their consequences. Section 84 provides the machinery for enforcement after the necessary jurisdictional facts

have been determined by the competent authority. According to the Petitioners, Sections 84 and 84C cannot be used to avoid the statutory procedure under Section 70 or to decide questions of civil title, possessory title or adverse possession which fall within the jurisdiction of the Civil Court.

22. On the basis of the above submissions, the Petitioners proposed the following questions for consideration:

(a) Whether, even though Section 84C of the MTL Act does not prescribe any period of limitation, the power under the said provision must be exercised within a reasonable period and is subject to the principles of delay, laches, acquiescence and prejudice?

(b) Whether the Collector, while exercising limited statutory jurisdiction under Sections 84 and/or 84C of the MTL Act, can initiate or continue proceedings after an inordinate and unexplained delay, particularly when rights have become settled and possession has continued for a substantial period?

(c) Whether the jurisdiction under Section 84C is original and independent and permits the Collector to decide disputed questions relating to title, possession, trespass, adverse possession or the nature of the possession of the occupant?

(d) Whether proceedings under Section 84C are consequential in nature and can be initiated only after the relevant status or basic dispute has been decided by the

competent Civil Court or the competent tenancy authority?

(e) Whether the Collector's jurisdiction under Sections 84 and 84C extends to questions of possessory title and adverse possession, or whether such questions fall within the jurisdiction of the Civil Court?

(f) Whether an order under Section 84C is a necessary jurisdictional foundation before Section 84 can be used for recovery or delivery of possession?

(g) Whether Section 84 can be used as an independent source of power to dispossess a person when his alleged status as an unauthorised occupant, trespasser or person without title is seriously disputed?

(h) Whether, in view of the earlier order of the Division Bench directing the Respondent to file a Civil Suit for declaration of title and possession, the Respondent is precluded from seeking substantially the same relief through revenue proceedings unless and until such declaratory relief is obtained from the Civil Court?

(i) Whether the Full Bench judgment concerning the Collector's power to consider a claim of tenancy applies to a case where the person in possession does not claim tenancy but claims settled possession and possessory title?

(j) If a tenancy issue is found to arise, how are the jurisdictions under Sections 70, 84 and 84C of the MTL Act to be read together so as to avoid overlapping jurisdiction

and at the same time preserve the jurisdiction of the Civil Court over questions of title and adverse possession?

23. Learned Senior Advocate referred to Section 84 of the Maharashtra Tenancy and Agricultural Lands Act, 1948. According to the Petitioners, Section 84 provides for summary eviction of a person who is unauthorisedly occupying or is wrongfully in possession of land in the circumstances mentioned in the provision. These circumstances include a case where the transfer or acquisition of the land, whether by an act of the parties or by operation of law, is invalid under the Act; where management of the land has been assumed under the Act; or where the person occupying the land is not entitled to occupy it under the provisions of the Act and the Act does not otherwise provide for his eviction. In such circumstances, according to the provision relied upon by the Petitioners, the person in occupation may be summarily evicted by the Collector.

24. The principal issues raised by the Petitioners concern limitation and the requirement of a reasonable period. Their submission is that the summary power of eviction under Section 84 cannot be exercised at any point of time without considering the period which has passed. According to them, the principle of reasonable time cannot be excluded from proceedings under Section 84C. Another question raised is whether a person who is a pure trespasser, having no relationship or connection with the provisions of the Tenancy Act, can be summarily evicted under Section 84C. On the question of limitation and reasonable time, the Petitioners submitted that the earlier view based upon the

judgment of B.P. Dharmadhikari, J., particularly the observations in paragraphs 21 and 22, that limitation and the test of reasonable time do not apply to proceedings under Section 84C requires reconsideration. According to the Petitioners, the matter deserves to be considered by a larger Bench.

25. The Petitioners sought to distinguish the authorities relied upon against them. According to them, the decision in *Uttam Mahale* concerns execution proceedings, where the question of statutory limitation operates in a different manner. It was submitted that the judgment of the Gujarat High Court relied upon by the other side cannot now be treated as good law in view of the binding judgments of the Supreme Court recognising that statutory powers, even where no period is provided, have to be exercised within a reasonable time in appropriate cases. The Petitioners submitted that legal certainty is an important part of the Rule of Law. According to them, a statutory authority cannot be given an unlimited power to start proceedings after arbitrary periods such as 50, 100 or 150 years. Whether the period is reasonable must depend upon the facts of each case and cannot be excluded from consideration under Section 84C.

26. On the scope of Section 84C, the Petitioners submitted that the words "under the said provisions" require there to be a direct connection with the Maharashtra Tenancy and Agricultural Lands Act. According to them, where a person is a pure trespasser and there is no connection between his possession and any tenancy right or statutory provision under the Act, summary eviction under Section 84 cannot be ordered. In such a case, the remedy would be

under general civil law by filing a suit for declaration and recovery of possession. It was submitted that such a matter cannot be decided through summary revenue proceedings. It was submitted that, while deciding whether the authority has jurisdiction, the Court must look at the case made in the original application filed by the person seeking eviction. The jurisdiction cannot be created by relying upon the defence or upon an alternative or inconsistent plea raised by the person in possession, such as a plea of Batai or tenancy.

27. Applying these submissions to the facts of the present case, the Petitioners referred to the case made by the Respondents. According to the Petitioners, the Respondents stated in their application that the possession had been obtained between 1964 and 1974 and that mutation entries had been made. They stated that the Petitioners had no continuing statutory interest or concern with the land. The Petitioners relied upon the observations made by this Court in the earlier mutation proceedings. According to them, this Court had noticed that the Petitioners were in possession and had granted liberty to the owner to establish both title and possession before the competent Civil Court.

28. The Petitioners submitted that there was an inordinate delay in initiating the present proceedings. According to them, the proceedings were started after more than 33 years from the Court order of 1983, or more than 43 years if the period is calculated from 1974. Such a long and unexplained delay, according to the Petitioners, cannot satisfy the requirement of a reasonable period. On the basis of the above submissions, the Petitioners contended

that the proceedings under Section 84 of the Act have no application to the facts of the present case. According to them, the summary power was exercised after an unreasonable period and without jurisdiction. They submitted that the Order passed by the Maharashtra Revenue Tribunal deserves to be quashed and set aside.

29. Mr. Drupad Patil, learned Advocate appearing for the Respondents, submitted that the Application filed by the original Applicants under Section 84(c) of the Act of 1948 was maintainable. According to him, there is no period of limitation which can prevent the authority from exercising the power under Section 84(c). He submitted that the Petitioners are in possession of the suit land. According to him, the statutory right available under Section 84(c) cannot be taken away or abandoned merely because of any act or conduct of the parties. In the present case, the Petitioners are in unauthorised possession of the suit land. Therefore, according to the learned Advocate, they are liable to be evicted by exercising the power under Section 84 of the Act of 1948.

30. Learned Advocate submitted that a similar provision, namely Section 98 of the Hyderabad Tenancy and Agricultural Lands Act, 1950, was considered by this Court in *Laxman Shankar Bandgar v. Venkat Rama Bandgar and Others*, 2014 (6) ALL MR 661. In that case, the learned Single Judge relied upon the judgments in *Mesaji Laxman Ubare v. Ramchanra (Dr.) Laxminarayan Toshniwal and Others*, 2011 (4) Mh.L.J. 668, *Limbaji Shankar Munde (deceased through L.Rs.) v. Bhaurao Baliram Mundhe (deceased through*

L.Rs.) and Others, 2010 Mh.L.J. 138, and *Ghanshyamprasad Natwarlal Bhatt v. Gendalsingh Vakhatsingh and Others*, Special Civil Appeal No. 764 of 1955. In paragraph 42 of the judgment, the learned Single Judge made the following observations:

“42. In view of the above observations of the Division Bench of this Court in *Ghanshyamprasad Natwarlal Bhatt* (supra), *Limbaji Shankar Munde* (supra) and *Mesaji s/o Laxman Ubare*; 2011 (4) ALL MR 25], I find it appropriate to follow the view taken in the aforesaid three judgments and conclude that Section 98 of the Act of 1950, cannot be fettered with limitation. As such, I conclude that the application preferred by the applicants under Section 98 of the Act of 1950 was maintainable and has been correctly so held by the Deputy Collector, Land Reforms and the Maharashtra Revenue Tribunal, Aurangabad.”

31. Learned Advocate for the Respondents submitted that the same provision, namely Section 98 of the Act of 1950, was considered by the Division Bench of this Court in *Ganesh Kachru Sonawane v. Khushalrao Sable*, Writ Petition No. 9745 of 2011, *Aurangabad Bench*. The Division Bench took the following view:

“22. Section 98 of the Act is a power of the Collector. It pertains to summary eviction of the person unauthorizedly occupying or wrongly in possession of the land. The purport of Section 98 is to remove an unauthorized occupant. A trespasser is a trespasser and cannot be heard to contend that because of lapse of time his possession culminates into valid possession. Only exception is a person claiming right by way of adverse possession. But the provisions of the Act do not contemplate situation of adverse possession. The judgments cited by the respondents do not commend us to hold that even if the limitation is not provided still it should be treated as a reasonable time.”

32. Learned Advocate submitted that, in the present case, the Petitioners claim to be in possession of the land without any authority. However, they have neither pleaded nor proved the date from which their possession allegedly became adverse to the title of the Respondents. According to him, in the absence of any such plea or proof and in the absence of any adverse effect on the title of the Respondents, the Application filed by them under Section 84(c) cannot be treated as barred by limitation. Learned Advocate submitted that, even in the earlier proceedings and in the revenue record, the name of the predecessor of the Petitioners was shown on the basis of “Batai Basis” and “Khand Basis”. However, according to him, the Petitioners have failed to establish that they or their predecessor had the status of a “Tenant”. The Maharashtra Revenue Tribunal has rightly treated their possession as unauthorised. In these circumstances, according to the learned Advocate, the order directing their eviction by exercising powers under Section 84(c) cannot be said to be illegal.

REASONS AND FINDINGS:

33. I have considered the submissions made by the learned counsel for the petitioners as well as the learned counsel appearing for the respondents. The question is that when the statute has not provided any express period of limitation, whether the power under Section 84(c) can be exercised at any point of time without looking into the delay, conduct of the parties and the prejudice which may have occurred during the intervening period.

34. In my view, this question has to be considered in four parts. First, whether absence of an express period of limitation means that there can be no question of reasonable time at all. Second, whether the reasoning in *Ganesh and Another*, which was dealing with Section 98 of the Hyderabad Tenancy and Agricultural Lands Act, 1950, can be applied to Section 84(c) of the Bombay Tenancy and Agricultural Lands Act, 1948. Third, what is the nature of the power under Section 84(c), particularly where the person in possession claims tenancy, title or some other statutory right. Fourth, whether on the facts of the present case, the long delay and the earlier proceedings have any effect on the exercise of the summary power under Section 84(c).

Absence of limitation and the principle of reasonable time:

35. The relevant part of Section 84 reads as under:

"84. Summary eviction.— Any person unauthorisedly occupying or wrongfully in possession of any land—

(a) the transfer or acquisition of which either by the act of parties or by the operation of law is invalid under the provisions of this Act,

(b) the management of which has been assumed under the said provisions, or

(c) to the use and occupation of which he is not entitled under the said provisions and the said provisions do not provide for the eviction of such persons,

may be summarily evicted by the Collector."

36. Plain reading of the provision makes it is clear that mere possession of land is not enough to invoke Section 84(c). There

has to be a person who is "unauthorisedly occupying or wrongfully in possession". Then, under clause (c), such person must be one who is not entitled to the use and occupation of the land "under the said provisions" and there must be no other provision in the Act for his eviction. Therefore, before an order of summary eviction is made, there must be a finding regarding the nature of possession. The Collector has to see whether the possession is unauthorised.

37. It is true that Section 84 does not provide any period of limitation. Therefore, it cannot be said that an application under Section 84(c) becomes barred only because a particular number of years have passed. The Court cannot put three years or any other fixed period into the statute when the Legislature has not provided such period. Absence of limitation and reasonable time are not the same thing. Limitation creates a statutory bar. Delay and laches are another consideration. The question there is whether the statutory power was exercised after such long time that the exercise of the power becomes unreasonable, considering the statute and the facts of that particular case.

38. The Supreme Court in *Bhatinda District Coop. Milk Producers Union Ltd.*, has held as under:

"18. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors."

39. This principle is not limited only to the statute which was before the Supreme Court in that case. The same principle has been considered in other cases where no particular period of limitation was provided.

40. In *Ibrahimpatnam Taluk Vyavasaya Coolie Sangham*, the statute used the words "at any time". Even then, the Supreme Court did not understand these words as giving unlimited power to the authority to act at any time. It held:

"Use of the words 'at any time' in sub-section (4) of Section 50-B of the Act only indicates that no period of limitation is prescribed within which suo-motu power could be exercised reckoning or starting from a particular date advisedly and contextually. Exercise of suo-motu power depended on facts and circumstances of each case. In cases of fraud, this power could be exercised within a reasonable time from the date of detection or discovery of fraud. While exercising such power, several factors need to be kept in mind such as effect on the rights of the third parties over the immovable property due to passage of considerable time, change of hands by subsequent bona fide transfers, the orders attaining finality under the provisions of other Acts (such as Land Ceiling Act). Hence, it appears without stating from what date the period of limitation starts and within what period the suo-motu powers is to be exercised, in sub-section (4) of Section 50-B of the Act, the words "at any time" are used so that the suo-motu power could be exercised within reasonable period from the date of discovery of fraud depending on facts and circumstances of each case in the context of the statute and nature of rights of parties. Use of the words "at any time" in sub-section (4) of Section 50-B of the Act cannot be rigidly read letter by letter. It must be read and construed contextually and reasonably."

41. In *Situ Sahu*, the Supreme Court considered this question. While dealing with the statutory power for restoration of possession, the Court held:

"However, even such power cannot be exercised after an unreasonably long time during which third-party interests might have come into effect. Thus, the test is not whether the period of limitation prescribed in the Act of 1963 had expired, but whether the power under Section 71-A was sought to be exercised after unreasonable delay."

42. The Court observed that a period of forty years was not a reasonable time and that the authority should not have exercised the power after such an unreasonable period. Therefore, I am unable to accept the submission that merely because Section 84(c) does not provide any period of limitation, the Collector can exercise the power without looking at how long the delay is and under what circumstances the proceeding has been started. At the same time, I am unable to accept the other submission that an application under Section 84(c) becomes barred after three years or any other fixed period. The correct position appears to be between these two extremes. There is no fixed period of limitation. But that does not mean that the statutory power can be exercised without considering reasonable period or that delay can never be examined.

43. This distinction becomes clear from the judgment of the Supreme Court in *M/s North Eastern Chemicals Industries (P) Ltd. v. M/s Ashok Paper Mill (Assam) Ltd.*, 2023 SCC OnLine SC 1649. The Court considered *State of Punjab, Jagdish, SEBI v. Sunil Krishna Khaitan* and other decisions. The principle laid down is

that when no limitation is prescribed, the Court should not make any fixed period. At the same time, the conduct of the parties, nature of the proceeding, length of delay, possibility of prejudice and the scheme of the statute may be required to be considered.

44. The law does not say that "no limitation" means that there can be "no scrutiny of delay". It only means that the Court should not convert absence of a statutory period into some fixed period. The question of delay has to be seen from the facts of each case. The Supreme Court in *North Eastern Chemicals Industries* has considered that when delay is relied upon, the effect of such delay and the prejudice or loss caused because of it has to be shown from the facts. In my view the principle of reasonable time cannot be understood as an attempt to change Section 84(c). It is not necessary to put three years, five years or any other period into the provision. What is required is only to accept that when a statutory power is exercised after an long and unexplained period, the exercise of such power can be examined with reference to delay, arbitrariness, prejudice and rights which may have become settled during the intervening period.

Whether *Ganesh* can be applied to Section 84(c) and whether its ratio requires reconsideration:

45. In *Ganesh and Another*, the Division Bench was considering the question under Section 98 of the Hyderabad Tenancy and Agricultural Lands Act, 1950. The question was whether, when the Legislature has not provided any period of limitation, an application under Section 98 can be made even after a long period

of time. The question which was referred to the Division Bench was as under:

"Whether any period of limitation is applicable for preferring an application under Section 98 of Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as Act)?"

46. Thus, the question before the Division Bench was regarding the effect of absence of limitation in Section 98. The respondents are relying upon this judgment and submit that the same position will apply to Section 84 of the Bombay Tenancy and Agricultural Lands Act, and particularly Section 84(c), which is involved in the present proceedings. According to the respondents, if the Legislature has not provided any period within which the remedy is to be exercised, neither the authority nor the Court can put such period into the provision by interpretation. The Division Bench in *Ganesh* answered the reference by holding that there was no period of limitation for filing an application under Section 98. The answer given by the Division Bench is as follows:

"(i) No period of limitation is applicable for preferring application under Section 98 of the Act and it is not permissible to read a reasonable time of limitation into the Section."

47. There is no dispute that this was the conclusion of the Division Bench. It is true that this Court, sitting as a coordinate Bench, cannot ignore the said judgment and take a different view only because another interpretation is possible. The judgment of a coordinate Division Bench has to be respected, unless there is a proper reason for placing the matter before a larger Bench.

However, before applying *Ganesh* to the present case, it is necessary to see what was decided in that case. The provision which was before the Court, the scheme of that Act and the question which was answered are required to be seen. Only then it can be said whether the same conclusion will answer the question arising under Section 84(c) of the Bombay Tenancy and Agricultural Lands Act.

48. The respondents are right to the extent that *Ganesh* is a judgment of a Division Bench and that a coordinate Bench normally follows an earlier judgment of another Division Bench. Merely because another view may appear possible is not sufficient reason for a coordinate Bench to disregard the earlier judgment. There has to be a legal reason for placing the matter before a larger Bench. That position cannot be lost sight of. But there is another question which requires consideration. It is whether the proposition stated in *Ganesh* decides the question now arising under Section 84(c). Some observations in *Ganesh* may have to be understood with reference to the particular provision and the statutory scheme which were before that Court. A judgment has to be understood with reference to the question which the Court was deciding. The observations cannot be taken separately from the provision, facts and issue before the Court and then applied to another provision without seeing whether the two situations are the same. It is true that the Division Bench in *Ganesh* noticed the similarity between Section 98 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 and Section 84 of the Bombay Tenancy and Agricultural Lands Act, 1948. The Division Bench

treated the two provisions as *pari materia* and, while considering the absence of limitation, observed as follows:

"Thus, Sections 84 can be said to be *pari materia* to that of Section 98 of the Act of 1950. The silent feature of both these sections is regarding absence of any period of limitation. In other words, any person can move such authority, provided under Section 84 and 98 at any point of time. Thus, absence of clause of limitation under Section 98 and Section 84 is identical."

49. This observation is relevant and cannot be ignored. But only because two provisions are treated as *pari materia*, it does not mean that every question under one provision will have the same answer under the other provision. The words of the provision, the nature of the right involved, the other provisions of the Act and the result of exercising the power are required to be seen. The similarity between the two provisions is one important circumstance. But the whole provision and the scheme of the Act have to be considered.

50. The difficulty is that the issue cannot be decided only by saying that Section 98 and Section 84 are similar. The present proceedings are under Section 84(c), and clause (c) contains certain conditions.

51. Section 84(c) applies to a person: "to the use and occupation of which he is not entitled under the said provisions and the said provisions do not provide for the eviction of such persons," and only when these conditions are found to exist can such person be summarily evicted by the Collector. These words have to be given some meaning. The Collector has to consider whether the person

in possession is entitled to use and occupy the land under the provisions of the Tenancy Act. The Collector has to see whether some other provision of the Act provides a remedy for eviction of that person. Therefore, Section 84(c) cannot mean that if one person is in possession and another person disputes that possession, the person in possession can be called a trespasser and evicted. Before the summary power is used, the conditions which give jurisdiction under Section 84(c) have to be established. The words "under the said provisions" and "the said provisions do not provide for the eviction" are important. They require the Collector to examine whether the person in possession has any right or protection under the Tenancy Act. The Collector has to see whether any other provision of the same Act applies to the case and provides another remedy. For this reason, Section 84(c) cannot be understood to mean that every person who has remained in possession for a long time can be declared a trespasser because the person claiming the land does not accept his possession. The source and nature of possession may have to be examined. If the person in possession claims that he is a tenant, deemed purchaser or has some other statutory protection, such claim may have to be considered before exercising the summary power. Thus, the jurisdiction under Section 84(c) depends upon establishing the necessary conditions. Only the question of summary eviction arises.

52. This is one reason why the observation in *Ganesh* that, in absence of limitation, an application can be made at any point of time requires careful consideration when the Court is dealing with

Section 84(c). The question is not only whether there is a period of limitation. There is a difference between saying that the Legislature has not fixed any period and saying that the authority can exercise the power after any length of time without looking at what happened during that period. These are two different matters. The Legislature may have deliberately not fixed any particular number of years. But it does not follow that the passage of time, conduct of the parties, earlier proceedings, changes in possession, creation of rights or prejudice caused because of delay have no relevance. The present issue is about the extent of power under Section 84(c) and the manner in which that power can be exercised after a long period. If the authority has first to establish the jurisdictional facts, and if the statutory scheme requires consideration of the nature of occupation and availability of another remedy, then delay cannot be kept outside consideration.

53. There is another reason why *Ganesh* requires careful consideration. The Division Bench was aware of the judgments dealing with the principle of reasonable time. It considered several judgments including *State of Punjab*, *State of Gujarat v. Patil Raghav Natha*, *Ram Chand*, *Chhedi Lal Yadav* and *Mohamad Kavi*. These judgments were relied upon for the proposition that even where no period of limitation is prescribed, a statutory power may not be exercised after an unreasonable period. The Division Bench considered *Mohamad Kavi*, which concerned Section 84-C of the Bombay Tenancy and Agricultural Lands Act. Therefore, the Division Bench was aware of the judgments dealing with reasonable time even where no fixed limitation was provided. The

question before this Court is not whether the principle of reasonable time exists. It does exist. The question is how that principle is to be understood along with the conclusion reached in *Ganesh*.

54. In *Mohamad Kavi Mohamad Amin*, the Supreme Court was dealing with Section 84-C of the Bombay Tenancy and Agricultural Lands Act. One of the submissions before the Supreme Court was that the statute did not provide any period of limitation. The Supreme Court did not accept that merely because no limitation was prescribed, the authority could exercise the power at any time and after any number of years. The Supreme Court held that the power had to be exercised within a reasonable time and, on the facts of that case, found that the exercise of the power was beyond such reasonable time. This judgment is important because it concerns the same Bombay Tenancy and Agricultural Lands Act, though the provision involved was Section 84-C and not Section 84(c). Section 84-C and Section 84(c) are not identical provisions and cannot be treated as one and the same. But the principle stated by the Supreme Court regarding exercise of statutory power where no period is prescribed cannot be ignored while considering the submission of the respondents. The Division Bench in *Ganesh* considered this line of reasoning in the context of Section 98 of the Hyderabad Act. The Division Bench placed importance on the object of that provision and considered *Uttam Namdeo Mahale* and the Division Bench judgment in *Ghanshyamprasad Natwarlal Bhatt*. The reasoning was that when the Legislature has deliberately not prescribed any limitation, the Court should not

supply a period by interpretation. In that context, the Division Bench observed:

"Adopting literal and strict interpretation, we disapprove the proposition that even when no limitation is provided in Section 98 of the Act, it is to be construed as reasonable period and the reasonable period would be three years."

55. To this extent, the observation has considerable force. If the Legislature has not provided three years, the Court cannot take three years from another provision or another statute and put it into Section 84 or Section 98. There may be another provision where three years is prescribed. But that does not mean that every provision where no period is mentioned must be treated as having three years limitation. Such an approach may amount to putting words into the statute which the Legislature has not used.

56. I have no difficulty with the principle that the Court cannot make a fixed period of limitation on its own. If the Legislature intended three years, five years or any other period, it could have provided for it. It is not for the Court to make such a provision. I am not inclined to read three years into Section 84(c). The petitioners cannot succeed only by saying that the present proceedings were filed after more than three years. Section 84(c) does not prescribe any such fixed period. Saying that there is no fixed period of limitation does not mean that every question relating to delay has to be ignored. The next question is whether the authority can exercise the statutory power after an unreasonably long and unexplained period without looking at what happened during that period.

57. Paragraph 26 of Ganesh states:

"(i) No period of limitation is applicable for preferring application under Section 98 of the Act, and it is not permissible to read a reasonable time of limitation into the Section."

58. The words "reasonable time of limitation" require some consideration. There is a difference between putting a fixed period into the statute and considering whether the statutory power should be exercised after an unreasonable delay. For example, if the Court says that every application under Section 84(c) must be made within three years, that would amount to creating a limitation period which the Legislature has not provided. Such a course cannot be adopted. But if the Court says that there is no fixed period of limitation, while at the same time the authority has to consider whether it is reasonable to exercise the power after an unexplained delay of several decades, particularly where rights have changed or prejudice has been caused, that is not the same thing as creating a limitation period. The latter principle does not end the remedy after a fixed number of years. It examines whether the statutory power has been exercised in the facts and circumstances of the particular case. This distinction has been recognised in judgments of the Supreme Court where no fixed period of limitation was prescribed. The decision in *North Eastern Chemicals Industries* is one such later judgment where the Court considered delay, prejudice and the nature of the statutory power without creating limitation period.

59. It appears that *Ganesh* was pronounced on 5 December 2023. *North Eastern Chemicals Industries* was pronounced on 11 December 2023. Therefore, the latter judgment was not before the Division Bench when *Ganesh* was decided. A later judgment does not make an earlier judgment of a coordinate Bench wrong. That is not what is being held here. But where a later judgment of the Supreme Court explains the principles relating to delay and exercise of statutory power where no limitation is prescribed, that judgment has to be considered while deciding the present issue. The later judgment does not say that the Court should create a limitation period which the Legislature has not enacted. The principle is different. While considering whether a statutory power has been exercised, the authority or Court may have to consider the length of delay, conduct of the parties, rights which may have arisen in the meantime, the nature of the proceeding and prejudice which may have been caused because of the delayed action. Therefore, there may not be a conflict between saying that there is no fixed limitation and saying that unreasonable delay may still be relevant. The question is whether *Ganesh* intended to exclude this latter principle altogether. In this background, the issue cannot be stated as whether *Ganesh* is right or wrong on the question of limitation. The question is somewhat different. It is whether *Ganesh* is to be understood as saying that once the Legislature has not prescribed any period of limitation, matters such as reasonable time, unexplained delay, laches, prejudice and settled rights can never be considered in any case. If *Ganesh* is understood only to mean that the Court cannot put a fixed period of limitation into

Section 98, then there is no difficulty with that principle. That position has to be respected. But if Ganesh is understood to mean that even where there is an extraordinary and unexplained delay of several decades, the authority has to exercise the power without considering what happened during that long period, then the matter becomes different. Such a wide proposition would require examination in the light of the judgments of the Supreme Court dealing with exercise of statutory powers after long delay. A statutory power may continue to exist in the statute. But the actual exercise of that power can still be examined in the facts of the case, particularly where the delay is long and circumstances have changed during that period.

60. In this connection, the observation relied upon by the Division Bench in *Ganesh* from *Ghanshyamprasad Natwarlal Bhatt* requires to be understood. The Division Bench there observed:

"You cannot apply limitation by analogy. Limitation either bars a remedy or extinguishes a right of a party and it is unthinkable that any Court would bar a remedy or extinguish a right when the Legislature has not done so by importing the principles of some other statute and drawing analogy from some other provision of law. If there is no limitation provided by the legislature then the only thing that the Tribunal has to do is to permit the application to be made irrespective of passage of time."

61. The first part of this observation is clear. A Court cannot take a period of limitation from another statute and apply it only by analogy. If the Legislature has not prescribed a period, the Court cannot create one and thereby extinguish a remedy or right.

However, the words "irrespective of passage of time" should not be understood as saying that every statutory authority has an unlimited power to act after any number of years, whatever may have happened during that period. The observation was made in the context of whether another period of limitation could be brought into the provision by analogy. It was not an examination of every separate question concerning delay, prejudice, settled rights, conduct of parties and whether it would be proper to exercise statutory power after an extraordinary period. Therefore, the observation in *Ghanshyamprasad* prevents the Court from taking a period from another statute and putting that period into Section 84 by analogy. But the words "irrespective of passage of time" cannot, in my respectful view, be taken out from their context and treated as if the Legislature has said that the Collector can exercise the power after any number of years and in every situation without considering what happened during the intervening period. The later judgments of the Supreme Court show that absence of a limitation period does not prevent consideration of whether the statutory power has been exercised after an unreasonable delay.

62. The question of delay may become relevant for another reason. During a long period, possession may have become settled. Third-party rights may have been created. Parties may have acted upon earlier orders. Investments may have been made. Other circumstances may have changed. In such a situation, the question is not whether a limitation period has expired. The question is whether the statutory power can still be exercised in those

particular circumstances. These two concepts have to be kept separate. Statutory limitation means that after the period prescribed by the Legislature, the remedy is barred or the right is affected. Reasonable-time review is different. It examines whether the authority has exercised its existing statutory power in the circumstances of the case. The first cannot be created by the Court when the Legislature has not provided it. But the second cannot be excluded merely because there is no statutory period of limitation.

63. I find that there is an arguable and substantial question whether *Ganesh*, while correctly holding that a fixed period of limitation cannot be imposed upon Section 98 by judicial interpretation, has stated the consequence too widely if it is understood as excluding the consideration of reasonable time, delay, prejudice and settled rights.

64. At the same time, I am conscious that *Ganesh* is a judgment of a Division Bench. This Court, sitting as a coordinate Bench, cannot depart from it merely because another view appears possible. If the interpretation of *Ganesh* which excludes even consideration of reasonable time and prejudice becomes necessary for deciding the present case, the proper course would be to place that question before a larger Bench. The reference to a larger Bench is not for introducing a fixed period of limitation into Section 84(c). The narrower question is whether the absence of statutory limitation takes away the power of the Court to examine whether the statutory authority has exercised its power after an unreasonable lapse of time and whether the prejudice or settled rights which may have arisen during that period can be considered

while examining such exercise. In my considered view, this distinction requires an authoritative answer. Only after this question is settled can the application of *Ganesh* to the present proceedings under Section 84(c) be determined.

65. I am of the considered view that the present case raises a substantial question regarding the correct interpretation of Section 84(c) and the extent to which the judgment in *Ganesh* can govern proceedings under that provision. Since *Ganesh* is a judgment of a Division Bench and the issue requires reconciliation with binding judgments of the Supreme Court, the appropriate course is to have the above four questions considered by a larger Bench, rather than this Court taking a view contrary to a coordinate Division Bench.

66. It is only after this question is authoritatively determined that the merits concerning the petitioners' possession, the respondents' title, the effect of the earlier order of this Court and the maintainability of the particular Section 84(c) proceeding can be considered. The issue deserves consideration by a larger Bench on the four independent questions formulated below.

(i) The present Petition is not decided on merits at this stage;

(ii) In view of the reasons recorded above, the following questions arise for consideration by a larger Bench:

(a) Whether, notwithstanding the absence of any express period of limitation in Section 84(c) of the Bombay Tenancy and Agricultural Lands Act, 1948, the Collector is required to consider whether the power under Section 84(c) has been

exercised within a reasonable period, without importing any fixed period of limitation, having regard to the principles laid down by the Supreme Court in *State of Punjab v. Bhatinda District Coop. Milk Producers Union Ltd.*, *Ibrahimpatnam Taluk Vyavasaya Coolie Sangham v. K. Suresh Reddy*, *Situ Sahu v. State of Jharkhand* and *M/s North Eastern Chemicals Industries (P) Ltd. v. M/s Ashok Paper Mill (Assam) Ltd.*?

(b) Whether the ratio in *Ganesh and Another v. Khushalrao and Others*, 2023 SCC OnLine Bom 2623, that it is "not permissible to read a reasonable time of limitation" into Section 98 of the Hyderabad Tenancy and Agricultural Lands Act, 1950, would exclude consideration of delay, laches, prejudice and settled rights while exercising the analogous power under Section 84(c) of the Bombay Tenancy and Agricultural Lands Act, 1948, and, if so, whether such proposition requires reconsideration in view of the judgments of the Supreme Court referred to above?

(c) Whether the power under Section 84(c) can be exercised merely upon finding that a person is in possession without an established title, or whether, having regard to the words "to the use and occupation of which he is not entitled under the said provisions and the said provisions do not provide for the eviction of such persons", the Collector is required to first determine whether the occupant claims or has any statutory right under the Act and whether any other statutory remedy is available before resorting to summary eviction?

(d) Whether, where possession has continued for several decades, earlier revenue proceedings and orders of the High Court have taken note of such possession, and the rival parties assert competing rights under the Tenancy Act and other laws, the Collector can exercise the summary power under Section 84(c) without considering the intervening proceedings, conduct of the parties, explanation for delay, possibility of prejudice and the requirement of finality in settled possession?

(iii) The Registry is directed to place the papers before the Hon'ble the Chief Justice for such further orders as may be considered necessary, including for constitution of a larger Bench to decide the above question.

(vi) All contentions of the parties on the merits of the Petition are kept open.

(vii) The Petition shall be placed before the appropriate Bench after the questions referred above are answered by the appropriate Bench.

(AMIT BORKAR, J.)