

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8043 OF 2023

WITH

INTERIM APPLICATION (ST) NO. 2501 OF 2025

IN

WRIT PETITION NO. 8043 OF 2023

- | | | |
|---|---|------------------------------|
| 1) Vijay Lallan Prasad Singh |] | |
| 2) Venu Srinivasan |] | |
| 3) Noel N. Tata |] | |
| 4) Jehangir H. C. Jehangir |] | |
| 5) Darius J. Khambata |] | |
| all adult Indian inhabitants, in their capacity |] | |
| as present Trustees of Sir Ratan Tata Trust, |] | |
| a public trust registered under the |] | |
| provisions of the Maharashtra Public Trusts |] | |
| Act, 1950, under the PTR No.E-1649(Bom) |] | |
| having its office at Bombay House, Homi |] | |
| Mody Street, Mumbai 400 001. |] | <u>...Petitioners</u> |

Versus

- | | | |
|---|---|--|
| 1) Errol Daniel Gomes |] | |
| an adult, Indian inhabitant, having his |] | |
| address at Flat No. 3, Gomes Mansion, |] | |
| Marve Road, Orlem, Malad (West), Mumbai |] | |
| 400 064. |] | |
| 2) Muriel Ashley D'Souza |] | |
| an adult, Indian inhabitant having her |] | |
| address at Marie House, 1 st Floor, 136, |] | |
| Marve Road, Sundar Lane, Orlem, Malad |] | |
| (West), Mumbai – 400 064. |] | |
| 3) Dan Daniel Gomes |] | |
| an adult, Indian inhabitant, having his |] | |
| address at Flat No. 6, Gomes Mansion, |] | |
| Marve Road, Orlem, Malad (West), Mumbai |] | |
| 400 064. |] | |
| 4) Charmaine John Nonhabel |] | |
| an adult, Indian inhabitant, presently at |] | |
| Scotland, through her constituted attorney |] | |
| Muriel D'Souza, having her address at Marie |] | |
| House, 1 st Floor, 136, Marve Road, Sundar |] | |
| Lane, Orlem, Malad (West), Mumbai– |] | |

400064.]
- 5) Craig Ceynac Pereira]
an adult, Indian inhabitant, having his]
address at Flat No. 5, Gomes Mansion,]
Marve Road, Orlem, Malad (West), Mumbai]
400 064.]
- 6) Ruben Ceynac Pereira]
an adult, Indian inhabitant, having his]
address at Flat No. 5, Gomes Mansion,]
Marve Road, Orlem, Malad (West), Mumbai]
400 064.]
- 7) Kirk Ceynac Pereira]
an adult, Indian inhabitant, having his]
address at Flat No. 5, Gomes Mansion,]
Marve Road, Orlem, Malad (West), Mumbai]
400 064.]
- 8) Hazel D'Souza]
an adult, Indian inhabitant, having his]
address at Flat No. 4, Gomes Mansion,]
Marve Road, Orlem, Malad (West), Mumbai]
400 064.]
- 9) Anthony Daniel Gomes]
an adult, Indian inhabitant, having his]
address at Flat No. 2, Gomes Mansion,]
Marve Road, Orlem, Malad (West), Mumbai]
400 064.]
- 10) J. N. Tata]
an adult, Indian inhabitant, in his capacity as]
Trustee of Sir Ratan Tata Trust, a public]
trust registered under the provisions of the]
Maharashtra Public Trusts Act, 1950, having]
its office at Bombay House, Homi Mody]
Street, Mumbai 400 001.]
- 11) The President]
Maharashtra Revenue Tribunal, Mumbai,]
having office at Old Secretariat, Annex]
Building, 2nd floor, Kala Ghoda, Fort, Mumbai]
400 032.]

...Respondents

Sr. Adv. Narendra Walawalkar a/w Mr. Karan Rukhana, Mr. Rahul Soman, Ms. Vijaya Rao, Mr. Avan Ardeshir i/by Mulla & Mulla and Craigie Blunt & Caroe, for the Petitioners.

Sr. Adv. Girish Godbole a/w Mr. Vaibhav Sukadhare, Mr. Kartik i/by

Narayanan & Narayanan, for the Respondent Nos. 1 to 8.

CORAM : SHARMILA U. DESHMUKH

RESERVED ON : April 24, 2026

PRONOUNCED ON : June 8, 2026

JUDGMENT:

1. This is a classic example of tenants, who seek to take disadvantage of rejection of their pre-decessor's claim of tenancy under the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short "**Tenancy Act**") to avoid eviction under the statutory provisions of Tenancy Act and then shifts stand to stake ownership rights by adverse possession.

2. **Rule.** With consent, Rule made returnable forthwith and taken up for final disposal.

FACTUAL MATRIX:

3. By this Petition, the challenge is to the order dated 26th September, 2022 passed by the Maharashtra Revenue Tribunal ("**MRT**") in Revision Application No. TNC/REV/MSD/102 of 2022 setting aside the order dated 15th January, 2020 passed by the Sub-Divisional Officer ("**SDO**"). The SDO had ordered eviction of Respondent Nos. 1 to 9 from the subject property and directed possession to be handed over to Sir Ratan Tata Trust.

4. The Petitioners along with Respondent No. 10 are the present trustees of Sir Ratan Tata Trust, a public charitable trust claiming to be

owners of the subject land situated at village Manori, Taluka Borivali. Respondent Nos. 1 to 4, 8 and 9 as legal heirs of one Daniel Felix Gomes and Respondent Nos. 5 to 7 as legal heirs of late Rita Ceynac Pereira, who is the daughter of Daniel Felix Gomes claim interest in the suit property through Daniel Felix Gomes.

5. Briefly stated the facts of the case are that the said Daniel Felix Gomes filed an application under Section 70 (b) and Section 32 G of the Tenancy Act on 19th July, 2005 seeking declaration of his tenancy right and sale of the property in his favour. By order dated 25th February, 2010, the Tahsildar dismissed Daniel's application on the ground that no documents have been produced to show that Daniel has been cultivating the land since 1st April, 1957. Prior to the passing of the order by the Tahsildar on 25th February, 2010, the Trust had filed an application under Section 84 of the Tenancy Act before the SDO for summary eviction of Daniel from the subject property on the ground of unauthorized occupation.

6. Against the order of Tahsildar dated 25th February, 2010 rejecting Daniel's tenancy claim, the Respondent No. 9 filed an Appeal before the SDO. The SDO took composite hearing of the Trust's application and appeal of Respondent No. 9 vide two different orders of 2nd April, 2012, the SDO rejected the Appeal and Trust's application and directed the present petitioners to approach the Civil Court for seeking

recovery of possession of the said property.

7. The rejection of Daniel's tenancy claim was not challenged further, and hence, attained finality. Against the rejection of the Trust's application, the Petitioners filed revision application before MRT, which was allowed vide order dated 24th June, 2013. MRT held that as tenancy claim has been rejected, the SDO should have exercised its power under Section 84(c) of the Tenancy Act and remanded the Trust's application to SDO for hearing.

8. The Trust had also filed Suit No. 1943 of 2014 in the City Civil Court seeking permanent injunction against some of the Respondents from obstructing the Trust's possession which came to be dismissed for want of prosecution.

9. The SDO, upon remand, reheard the Trust's application on 3rd February, 2015 and reserved the application for order. Before the order could be pronounced by SDO, Respondent Nos. 1 to 4 filed Suit No. 420 of 2015 before this Court seeking declaration of ownership by adverse possession. On 16th March, 2015, the SDO rejected the Trust's application as the issue of title of the subject properties was pending before this Court.

10. In the year 2016, the trustees of the Trust, who were Defendant Nos. 1 and 3 to 7 in Suit No. 420 of 2015, filed an application seeking rejection of the plaint under Order VII Rule 11, relying on the decision of

the Hon'ble Apex Court in the case of ***Gurudwara Sahib vs Gram Panchayat Village Sirthala And Another***¹, which came to be dismissed on 14th August, 2019, in view of the decision of the Hon'ble Apex Court in ***Ravinder Kaur Grewal vs Manjit Kaur***², which overruled the decision in ***Gurudwara Sahib vs Gram Panchayat Village Sirthala And Another*** (supra).

11. In the year 2017, the Trust filed revision application before MRT challenging the SDO's order dated 16th March, 2015, and by order dated 1st February, 2019, MRT allowed the application holding that the pendency of the Civil Suit by the Respondents before the High Court will not curtail the jurisdictional aspects of holding an inquiry by SDO, which is summary in its character, in terms of Section 84(c) of the Tenancy Act. Against the order of the MRT dated 1st February, 2019, the Respondent Nos 1 to 4 herein filed Writ Petition No. 12907 of 2019, which came to be disposed with, as in the meantime, SDO had passed a detailed order upon remand, with liberty to Respondents herein to agitate the findings of MRT that pendency of Civil Court does not create an impediment in present proceedings.

12. On 19th October, 2019, the Petitioners filed their written statement and counter claim in Suit No. 420 of 2015.

13. The SDO, in view of the order of MRT dated 1st February 2019, re-

1 (2014) 1 SCC 669

2 AIR 2019 SC 3827

heard the Trust's application for eviction, and by order dated 15th January, 2020, allowed the application and ordered Respondent Nos. 1 to 9's eviction from the suit property.

14. Respondent Nos. 1 to 4 challenged the SDO's order by filing Revision Application No. 102 of 2022 before the MRT, and vide impugned order dated 26th September, 2022, the order of SDO directing eviction of the Respondents came to be set aside. Hence, the present Petition.

SUBMISSIONS :

15. Mr. Walawalkar, learned Senior Advocate for the Petitioners has taken this Court in detail through the various orders passed by the SDO and the MRT and would submit that after holding that the SDO had the jurisdiction to adjudicate the application filed under Section 84(c) of the Tenancy Act on previous two occasions by relying on Section 316 of Maharashtra Land Revenue Code, 1966, MRT has dismissed the revision application by the impugned judgment. He points out the provisions of Section 85 of the Tenancy Act barring jurisdiction of Civil Court and submits that MRT failed to notice that the Tenancy Act and the Code of Civil Procedure, 1908 are distinct statutes providing for its own process of challenge to orders passed and under Section 85, there is a specific bar of jurisdiction of the Civil Court to decide any issues which the tenancy authorities are empowered to decide. He submits that MRT

failed to take note of Section 317 of Tenancy Act which saves the jurisdiction.

16. He submits that the suit which was initially filed by the Respondents was not maintainable as the claim was for declaration of title by adverse possession, which law changed after the decision in the case of ***Ravinder Kaur Grewal vs Manjit Kaur*** (supra). He submits that though the SDO allowed the application, the MRT took into consideration the change in law to hold that the proceedings under Section 84 (c) cannot be proceeded. He submits that the rights of the parties were crystallized on the date of filing of the application under Section 84(c) and what was required to be seen was whether the ingredients of Section 84(c) are satisfied. He submits that it was perfectly open for MRT to adjudicate Section 84(c) proceedings and make the order subject to the outcome of the Civil Court. He submits that the MRT erroneously applied the decision in the case of ***Dhondba Raoji Jadhao vs Krishnabai Gopalrao Raje And Another***³, in which the proceedings under Section 84(c) were filed subsequent to the Civil Suit, which is not the case here. He submits that if it is held that the authorities had no jurisdiction, even MRT could not have exercised jurisdiction and set aside the order of SDO.

17. He submits that what was invoked was power of revision under Section 76 of the Tenancy Act and there is no decision in the impugned

3 1980 Mh. L.J. 466

order on jurisdictional aspect, and therefore, there is a failure to exercise jurisdiction.

18. He would further submit that in the Civil Suit, filed by the Respondents, only the trustees are impleaded as parties and not the Trust. He would further submit that the prayers in the Civil Suit do not seek any divesting of the ownership title of the trust and any relief against the trustee is irrelevant as trustees have no title to the subject property. He submits that the filing of the counterclaim by the petitioners is immaterial as the same does not nullify the order of eviction of SDO passed under Section 84(c).

19. Drawing support from the decision in the case ***M/s. Thakur Stone Quarries through its Partner Munesh Hotilal Thakur vs State of Maharashtra And Others***⁴, he submits that this Court in the context of considering the provisions of Mines and Minerals (Development and Regulation) Act, 1957 has held that the Collector, SDO and Tahsildar though are revenue authorities under the Land Revenue Code, they become competent authorities under the Minor Mineral Rules and when they act under the aforesaid rules, their orders cannot be put to challenge in Appeal under Land Revenue Code but would be amenable to appellate jurisdiction under the Rules. He submits that this Court has considered the the distinct roles played by the authorities while deciding and adjudicating applications.

4 WP No. 1318 of 2019 decided on 9th June, 2020 by Bombay High Court.

20. He would further submit that the Division Bench of this Court in the case of ***Mallasha Sayabanna Mangonda vs Khadir Ajam Aherwadi***⁵ has interpreted Section 84 of the Tenancy Act in identical case where the opponents therein had claimed tenancy right and has held that the Collector would have the jurisdiction to evict such an occupant, which order would be subject to result of the suit. To support his contentions, following decisions are cited :-

(i) M/s. Thakur Stone Quarries through its Partner Munesh

Hotilal Thakur vs State of Maharashtra And Others (supra)

(ii) Mallasha Sayabanna Mangonda vs Khadir Ajam Aherwadi (supra)

(iii) Dhondba Raoji Jadhao vs Krishnabai Gopalrao Raje And Another (supra)

(iv) Shree Khambhati Modh Vanik Samaj vs State of Maharashtra And Others⁶

(v) Nusli Neville Wadia vs Ivory Properties And Others⁷

21. Mr. Godbole, learned Senior advocate for the Respondents would submit that this Court in present proceedings cannot go into the merits of the Civil Suit. He would point out that even otherwise the contention is baseless as the counter claim is filed by the Petitioners who are trustees and not by the trust. He would further point out that in the

⁵ [1969 Mh.L.J.]

⁶ [2023] 0 BHC (AS) 38570

⁷ (2020) 6 SCC 557

counter claim, the relief of ownership of trustees is sought and not of the Trust. He submits that the Trust is a juristic entity and the proceedings will have to be filed through the trustees. He submits that the suit and the counterclaim were on record of MRT and in view of the pending civil proceedings, MRT has rightly held that no summary eviction under Section 84(c) can be granted.

22. He would submit that after order of remand dated 24th June, 2013, the Tenancy Application No 1 of 2010 was heard by the SDO and the Petitioner's application was rejected vide order dated 16th March, 2015. He submits that the Respondents filed their suit for seeking declaration of ownership by adverse possession and chamber summons filed under Order 7 Rule 11 of CPC came to be disposed of on 14th August, 2019 pursuant to which the counter claim was filed by the Petitioners.

23. He submits that the decision of MRT dated 1st February, 2019 based on the decision in the case of ***Mallasha Sayabanna Mangonda vs Khadir Ajam Aherwadi*** (supra) is contrary to the Supreme Court decision and is therefore unsustainable. He submits that on the day of passing of the order of 1st February, 2019, the counter claim was not filed, which came to be filed on 18th October, 2019.

24. He submits that after remand, the SDO passed the order of eviction dated 15th January, 2020 and in revision, MRT considered the

change in the law and in view of the proceedings pending before the Civil Court rightly dismissed the revision.

25. He submits that the Division Bench of this Court in ***Smt. Durgaben Manibhai Makanji vs Moria Bavias***⁸ considered the powers of summary eviction under Section 84 of Tenancy Act to be drastic. He submits that the Division Bench has held that power to summarily evict is not against any person unauthorisedly occupying or wrongfully in possession of any land but is only against such a person provided the case of such person falls under either clause (a), (b) or (c) of Section 84. He submits that the Division Bench of this Court in ***Mallasha Sayabanna Mangonda vs Khadir Ajam Aherwadi*** (supra) took a view contrary to ***Smt. Durgaben Manibhai Makanji vs Moria Bavias*** (supra) and points out the finding in ***Mallasha Sayabanna Mangonda vs Khadir Ajam Aherwadi*** (supra) interpreting Section 84 holding that if the intention was that powers under Section 84(c) of the Act would be exercised only if the possession or occupation was against any prohibition as such in the Act itself, it would have clearly said so. He would further point out the decision of Hon'ble Apex Court in ***State of Punjab And Others vs Bhai Ardaman Singh And Others***⁹ considering *pari materia* provisions holding that the jurisdiction is attracted when it is established that the person in wrongful or unauthorised possession was not entitled to the use and

8 AIR 1956 Bom 706

9 AIR 1969 SC 13

occupation of the lands under the provisions of the Act.

26. He submits that in the present case, as the Petitioner's claim that the Respondent's are in unauthorised possession of the land, the remedy lies in Civil Court as the condition precedent for exercise of jurisdiction under Section 84 is absent. The decisions cited by Mr. Godbole in support of his contentions are as under:

(i) Smt. Durgaben Manibhai Makanji vs Moria Bavla (supra)

(ii) Suleman Hasham Memon vs Kashiram Bhau Patil¹⁰

(iii) Mallasha Sayabanna Mangonda vs Khadir Ajam Aherwadi (supra)

(iv) State of Punjab And Others vs Bhai Ardaman Singh And Others (supra)

(v) Kashiram Shriram Doble vs Maharashtra Revenue Tribunal At Nagpur And Others¹¹

(vi) Dhondba Raoji Jadhao vs Krishnabai Gopalrao Raje And Another (supra)

27. In rejoinder, Mr. Walawalkar would distinguish the judgments cited by Mr. Godbole and would point out that in the decision of **State of Punjab And Others vs Bhai Ardaman Singh And Others** (supra), the Counsel for State of Punjab was unable to point out any provision which renders the respondent therein disentitled by virtue of provisions of the

¹⁰ 1958 SCC Online Bom 77

¹¹ AIR 1970 Bombay 366

Act. He would point out that the decision of ***Mallasha Sayabanna Mangonda vs Khadir Ajam Aherwadi*** (supra) distinguished the decision of ***Smt. Durgaben Manibhai Makanji vs Moria Bavia*** (supra), that the observations in ***Smt. Durgaben Manibhai Makanji vs Moria Bavia*** (supra) have to be considered in context in which they are made. He would further submit that as the application under Section 70 (b) of the Tenancy Act was rejected, the Respondents were trespassers on the date of filing of the application under Section 84(c) of Tenancy Act.

REASONS AND CONCLUSION :

28. The core issue arising for consideration is whether in the present case, the condition precedent for exercise of powers of summary eviction under Section 84 of the Tenancy Act were present and thus the revenue authorities could not have refused to exercise jurisdiction.

29. Section 84 of the Tenancy Act 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."*

30. The debate essentially is whether the words "to the use and occupation of which he is not entitled under the said provisions" means that the person is disentitled by virtue of provisions of Tenancy Act to the use and occupation and could be summarily evicted under Section

84(c) or that it means that the person is not entitled to the use and occupation under the provisions of Tenancy Act.

31. The Hon'ble Division Bench of this Court in **Smt. Durgaben Manibhai Makanji vs Moria Bavia** (supra) was considering a case of purported surrender of tenancy and the landlord's case was that possession was obtained from the tenant and the possession was confirmed by order of Mamlatdar under Section 29(2) of Tenancy Act. The case of tenant was that he continued in possession and was dispossessed subsequently by landlord. The tenant approached the Collector under Section 84 of Tenancy Act which summarily evicted the landlord. The Hon'ble Division Bench considered the provisions of Section 84 and held that the words "and the said provisions does not provide for eviction of such persons" to qualify all three clauses of Section 84. The Hon'ble Division Bench thus held that for Section 84 to apply, the person unauthorisedly occupying the land must also fall within clause (c). Pertinently, it also noted as under:

"The Legislature was very careful in enacting this Section and conferring this wide power upon the Collector to see that where a procedure for eviction was provided for in the Act itself that procedure had to be availed of and it was only in these rare cases where the tenant or the landlord had to proceed against a person unauthorisedly in possession and there he could not avail himself of the procedure under the Tenancy Act that he could approach the Collector and ask his assistance for summary eviction."

32. The said decision of **Smt. Durgaben Manibhai Makanji vs Moria Bavia** (supra) was considered and distinguished in the case of **Mallasha Sayabanna Mangonda vs Khadir Ajam Aherwadi** (supra), where the

Hon'ble Division Bench interpreted the words "the provisions" occurring in Section 84 to mean that the occupant is not entitled under any of the provisions of the Act to occupy or use the land and if there is no provision for eviction of such person, Section 84 would apply. The Hon'ble Division Bench in paragraph 15 considered the various provisions under the Tenancy Act which provided for evictions of persons whose possession or occupation becomes unlawful because of the provisions of the Tenancy Act.

33. In ***Mallasha Sayabanna Mangonda vs Khadir Ajam Aherwadi*** (supra), the owner of the land had created a mortgage in respect of the suit land, which was sold in auction. The Respondent No 1 filed an application under Section 84(c) claiming to be a tenant and that the purchase by the Petitioner was void. The application came to be rejected on the ground that Respondent No 1 was not a tenant and he could not make an application under Section 84(c), which attained finality. Thereafter, the Petitioner filed an application under Section 84(c) for eviction of Respondent No 1 which was not entertained on the ground that there was no jurisdiction as Respondent No 1 was not in wrongful possession by virtue of provisions of the Tenancy Act. In such facts the Hon'ble Division Bench held that in paragraph 14 as under:

"14. It is argued that the words "to the occupation and use of which he is not entitled under the said provisions" contained in clause (c) of Section 84 of the Act must mean that because of the provisions of the Act he is not entitled to use or occupy the land in dispute i.e. whose possession of the land is rendered unlawful by virtue of some

provisions of the Act. It seems, with all respect, that the words must be given their natural meaning and we would not be justified in trying to paraphrase the said expression. If the Legislature intended to provide that the powers under section 84(c) of the Act would be exercised only if the possession or occupation was against any prohibition as such in the Act itself, it would have clearly said so. The words are "to the use and occupation of which he is not entitled under the said provisions" and they can only mean that the provisions do not entitle him to use and occupy the said land. The words "the said provisions" do not mean merely the provisions relating to transfers. In clause (a) of section 84, the words used are "under the provisions of this Act" while in clause (o), the words are "under the said provisions". They can only mean the provisions of the Act, and if it is shown that the occupant is not entitled under any of the provisions of the Act to occupy or use the land and if there is no provision for eviction of such persons, section 84 would apply."

34. Mr. Godbole would argue that the decision in ***Mallasha Sayabanna Mangonda vs Khadir Ajam Aherwadi*** (supra) cannot be followed for the reason, (a) The decision of ***Smt. Durgaben Manibhai Makanji vs Moria Bavia*** (supra) took a contrary view, and (b) the decision was contrary to Supreme Court decision of ***State of Punjab And Others vs Bhai Ardaman Singh And Others*** (supra). The decision in ***Mallasha Sayabanna Mangonda vs Khadir Ajam Aherwadi*** (supra) held that jurisdictional fact for exercising Section 84 powers is the unauthorised occupation *under* the provisions of Tenancy Act and not unauthorised occupation *because* of provisions of Tenancy Act. The decision of ***Smt. Durgaben Manibhai Makanji vs Moria Bavia*** (supra) was brought to notice of Court in ***Mallasha Sayabanna Mangonda vs Khadir Ajam Aherwadi*** (supra) and was distinguished.

35. The Hon'ble Apex Court in ***Gregory Patrao And Others vs***

Mangalore Refinery and Petrochemicals Limited And Others¹² has held that subsequent decision distinguishing the earlier decision would constitute binding precedent as under:

"This Court thereafter had considered the decisions in the case of UP Awas Evam Vikas Parishad (supra) and Himalayan Tiles and Marble (P) Ltd. (supra) and has distinguished the same and has observed and held that the decisions in UP Awas Evam Vikas Parishad (supra) and Himalayan Tiles and Marble (P) Ltd. (supra) shall not be applicable with respect to the acquisition under the KIAD Act, 1966. Once, this Court in the subsequent decision in Peerappa Hanmantha Harijan (supra) dealt with and considered the earlier decisions in UP Awas Evam Vikas Parishad (supra) and Himalayan Tiles and Marble (P) Ltd. (supra) and distinguished the same and observed and held with respect to the acquisition under the KIAD Act, 1966 that the allottee company can neither be said to be a "person interested" nor entitled for hearing before determination of compensation, the said ratio was binding upon the High Court. Thus, it was not open for the High Court to not follow the binding decision of this Court Peerappa Hanmantha Harijan (supra) by observing that in the subsequent decision in Peerappa Hanmantha Harijan (supra), the earlier decisions in UP Awas Evam Vikas Parishad (supra) and Himalayan Tiles and Marble (P) Ltd. (supra) have not been considered. The High Court has not noted that as such while deciding the case of Peerappa Hanmantha Harijan (supra), this Court did consider the earlier decisions in UP Awas Evam Vikas Parishad (supra) and Himalayan Tiles and Marble (P) Ltd. (supra) and had clearly distinguished the same. Not following the binding precedents of this Court by the High Court is contrary to Article 141 of the Constitution of India. Being a subsequent decision, in which the earlier decisions were considered and distinguished by this Court, the subsequent decision of this Court was binding upon the High Court and not the earlier decisions, which were distinguished by this Court."(Emphasis supplied)."

36. Applying the principle of law set out by the Hon'ble Apex Court, judicial discipline restrains the Single Judge from debating which decision should be followed as the Hon'ble Division Bench in **Mallasha Sayabanna Mangonda vs Khadir Ajam Aherwadi** (supra), having considered the decisions of **Smt. Durgaben Manibhai Makanji vs Moria Bavia** (supra) and **Suleman Hasham Memon vs Kashiram Bhau Patil** (supra) and having distinguished the decision of **Smt. Durgaben**

12 (2022) 10 SCC 461

Manibhai Mankanji vs Moria Bavia (supra), the decision of ***Mallasha Sayabanna Mangonda vs Khadir Ajam Aherwadi*** (supra) would bind this Court.

37. In identical facts, where the tenant had failed in its claim of tenancy, the Hon'ble Division Bench in ***Mallasha Sayabanna Mangonda vs Khadir Ajam Aherwadi*** (supra) has held that he is not entitled to the use or occupation of the land under any provision of the Tenancy Act. There is also no provision in the Act for his eviction and the Collector, therefore, would have jurisdiction to act under Section 84(c) of the Act.

38. Dealing with the second ground canvassed by Mr. Godbole, the decision of the Hon'ble Apex Court in ***State of Punjab And Others vs Bhai Ardaman Singh And Others*** (supra) was clarified by the Hon'ble Apex Court in ***Mohan Lal vs Kartar Singh And Others***¹³. In ***Mohan Lal vs Kartar Singh And Others*** (supra), the three judge Bench of the Hon'ble Apex Court considered the issue of correctness of the decision in ***State of Punjab And Others vs Bhai Ardaman Singh And Others*** (supra) as the same was doubted by two Judge Bench of the Hon'ble Apex Court for the following reasons:

"We do not see any warrant for the proposition that in order to attract Section 43(1)(b) there should be a specific and express provision in the Tenancy Act itself to the effect that those who are in illegal occupation will not be entitled to use the land. The Collector has been invested with the power to eject unlawful occupants under Section 43(1)(b). The provision will become meaningless if even in cases where a tenant admittedly in possession hitherto is forcibly dispossessed, and yet the Collector has no jurisdiction to evict him by holding an appropriate enquiry on being satisfied

13 1995 Supp (4) SCC 684

that the tenant was forcibly dispossessed. Certainly, no express provision providing that a person in unlawful occupation will not have a right to continue in occupation of the land is necessary. By the very nature of his occupation being found to be unlawful, he has no legal right to continue in occupation of the land. It is implicit in Section 43(1)(b) that an unauthorised or unlawful occupant has no right under the said Tenancy Act to remain in possession. In view of the numerous judgments of this Court in regard to tenancy legislations the said decision requires reconsideration. In view of the fact that the provisions constitute a complete code and are specially enacted to protect the tenants without obliging them to resort to time-and-money consuming civil suit, the decision in Ardaman Singh's case requires reconsideration.

39. The three judge bench of Hon'ble Apex Court considered the provisions of Section 43 and Section 47 of Pepsu Tenancy and Agricultural Lands Act (President's Act 8 of 1953) (for short "**PEPSU**") and clarified ***State of Punjab And Others vs Bhai Ardaman Singh And Others*** (supra) as under:

"[Section 43](#) and [47](#) of the Act, in the context of which we have to decide the questions which arise for our consideration, read as under:

"Section 43. (1) Any person who is in wrongful or unauthorised possession of any land:-

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

(b) to the use and occupation of which he is not entitled under the provisions of this Act, may, after summary enquiry, be ejected by the Collector, who may also impose on such person a penalty not exceeding five hundred rupees. (2) the Collector may direct that whole or any part of the penalty imposed under sub-section (1) shall be paid to the person who has sustained any loss or damage by the wrongful or unauthorised possession of the land.

Section 47. (1) No Civil Court shall have jurisdiction to settle, decide or deal with any matter which is under this Act required to be settled, decided or dealt with by the Financial Commissioner, the Collector or the prescribed authority.

(2) No order of the Financial Commissioner, the Commissioner, the Collector or the prescribed authority made under or in pursuance of this Act shall be called in question in any Court."

7. In [Bhai Ardaman Singh](#)'s case the tenants had applied to the Collector under [Section 43](#) of the Pepsu Agricultural Lands and Tenancy Act of 1953 ([Pepsu Act 8 of 1953](#)), which had come into force on December 13, 1953, for restoration of possession of lands which were in their possession earlier, alleging that they were forcibly dispossessed by the

land owner and, therefore, he was in wrongful and unauthorised possession of those lands. The Collector granted the applications and ordered restoration of possession. The orders were confirmed in appeal by the Commissioner. A learned Single Judge of the High Court dismissed the petitions filed against those orders. In appeals under the Letters Patent the High Court reversed the orders passed by the learned Single Judge on two grounds. It held that the Act of 8 of 1953 did not have retrospective operation and, therefore, no order for restoration of possession could have been passed as dispossession had taken place in 1943 i.e. long before the Act was brought into force. It also held that the proceedings of the Collector were vitiated because the landowner was not given an opportunity to lead evidence. This Court upheld the view of the High Court that [Section 43](#) had no retrospective operation. It also held that in order to attract the jurisdiction of the Collector to hold a summary enquiry and to pass an order of eviction and restoration of possession under clause (b) of [Section 43 \(1\)](#), it was necessary to show that the person in wrongful or unauthorised possession was also not entitled to the use and occupation of the land under the provisions of the Act. As no provision was pointed out which had rendered the landowner disentitled by virtue of the provision of that Act to the use and occupation of the land, it was held that the condition precedent to the investment of jurisdiction in the Collector being absent, the orders passed by the revenue authorities were without jurisdiction. **Obviously that view was taken by this Court because in that case the tenants had made applications under Section 43 of Act 8 of 1953 and, therefore, unless the conditions mentioned in that Section were satisfied no order of eviction could have been passed thereunder. The said Act did not have retrospective operation and the remedy provided by Section 43 was intended for acts of unlawful or unauthorised dispossession which were to take place after that Act came into force and for those cases where a person was found in unlawful or unauthorised possession since before that Act and the Act had rendered that person disentitled to the use and occupation of that land. It was in this context that this Court observed that no provision of that Act was pointed out to show that the landlord besides being in unlawful or unauthorised possession, was not entitled to the use and occupation of those lands under the Act. In view of the peculiar facts of that case, we are of the opinion that, it was correctly decided by this Court. Another factor which possibly influenced this Court in taking that view was that prior to the passing of that Act the tenants did not enjoy the protection as was granted by Section 7 of that Act and it was open to the landlord to terminate the tenancy at any time without giving any reason.** (Emphasis supplied)"

40. The Hon'ble Apex Court clarified that the decision of ***State of Punjab And Others vs Bhai Ardaman Singh And Others*** (supra) was decided in peculiar facts of that case and the remedy under Section 43

was intended for those cases of unlawful possession since before the Act and Act rendered the person disentitled to use and occupation. In ***Mohan Lal vs Kartar Singh And Others*** (supra), one Nahar Singh who was owner of the land had filed suit for possession of the land on basis of ownership and also on the ground that order of eviction passed against him under Section 43 of PEPSU was null and void. Mohan Lal who was the tenant in a compromise on 16th June, 1995 had handed over possession of the land to Nahar Singh and thereafter filed application for eviction of Nahar Singh under Section 43 of PEPSU, which was allowed and Mohan Lal got back possession of the land. The Civil Court held that the Sub Divisional Magistrate had no jurisdiction under Section 43 of PEPSU when the possession was surrendered by Mohan Lal and the relationship of landlord and tenant came to an end. The suit was decreed and in LPA, relying upon the decision in ***State of Punjab And Others vs Bhai Ardaman Singh And Others*** (supra), it was held that as possession of Nahar Singh-landlord was not unlawful, Collector had no jurisdiction.

41. In such facts, the correctness of decision of ***State of Punjab And Others vs Bhai Ardaman Singh And Others*** (supra) was doubted and the Hon'ble Apex Court in ***Mohan Lal vs Kartar Singh And Others*** (supra) held in paragraph 8 as under:

"8. In this case, it is not in dispute that if Nahar Singh had in fact dispossessed Mohan Lal forcibly then Nahar Singh would be a person in

unlawful and unauthorised possession and also not entitled to the use and occupation of that land. **It was not contended before us, and in our opinion rightly, that even after the Act has come into force, it would still be necessary for the person applying under Section 43 for an order of eviction to show that the other person is not only in unlawful or unauthorised possession of the land but is also not entitled to its use and occupation under the Act.** (Emphasis supplied)"

42. The decision of ***Mohan Lal vs Kartar Singh And Others*** (supra) clarifies the position that it is not necessary to show that the person is not only in unlawful or unauthorised possession but is also not entitled to use and occupation under the Act. Section 43 of PEPSU being pari materia to Section 84 of Tenancy Act, the principle of law would apply to Section 84 of Tenancy Act.

43. The present case stands on better footing as the Respondents failed in their claim for tenancy and were in unauthorised possession of land and were also not entitled to possession under the provisions of Tenancy Act.

44. The Respondents themselves applied under the provisions of the Tenancy Act claiming tenancy and once their application is rejected did a complete volte-face contending that they are not disentitled to possession because of provisions of Tenancy Act and being rank trespasser, only civil court would have jurisdiction. The dismissal of the tenancy claim indicates that they are not entitled to the use or occupation of the land under the provisions of Tenancy Act. In any event, the Hon'ble Apex Court in ***Mohan Lal vs Kartar Singh And Others***

(supra) has held that it is not necessary to show that the person is also not entitled to its use and occupation under the Act.

45. The SDO vide order dated 15th January, 2020 passed the order of eviction against the Respondents, holding that the Respondents or their pre-decessor does not come within the purview of tenancy of suit lands and the application for declaration of tenancy under Section 70(b) was rejected, which order has attained finality and that there was no relationship of landlord and tenant. It further noted that there is no explanation as to how the Respondent's pre-decessor obtained possession of the suit land and that their possession was not lawful or legal. The SDO considered the order of MRT dated 1st February, 2019 which had held that pendency of Civil Suit will not create an impediment in the application and concluded that Respondents are not entitled to possession of land and passed order of eviction.

46. By the impugned judgment dated 26th September, 2022, the Learned Member of MRT interfered with the findings of the SDO, for the following reasons:

(a) That by virtue of change in law, the party in adverse possession can file a suit seeking declaration of title

(b) By filing counter claim in such a suit, the trust had sought declaration of its title.

(c) the SDO did not consider the change in the position

of law, and the provisions of Section 316 of the Maharashtra Land Revenue Code contemplate bar of jurisdiction to this Tribunal where the matter is sub-judice in the Court of law which will also apply to case of summary eviction under the Tenancy Act and

(d) There could not be two alternate remedies concerning the same property and if the machinery of Civil Court is already set in motion, the proceedings will not be maintainable by relying upon decision of ***Dhondba Raoji Jadhao vs Krishnabai Gopalrao Raje And Another*** (supra).

47. The Learned Member of MRT conflated the issue of pendency of the Civil Suit seeking declaration of ownership with the issue arising for consideration under Section 84 of Tenancy Act. The Authority under Section 84 is required to determine the nature of the use and occupation of the subject land in terms of clause (c) of Section 84 and in event the possession is unauthorised or unlawful can order eviction. The pendency of the Civil Suit does not take away the jurisdiction of the Collector under Section 84, which vests exclusively with the authorities under the Tenancy Act. The Learned Member of MRT considered the provisions of Section 316 of Land Revenue Code which barred the jurisdiction of Tribunal in any matter which is sub-judice in Court of Law.

The Tribunal while adjudicating the revision application was considering the validity of the order passed by the authorities under the Tenancy Act. Section 317 saved the powers of Tribunal conferred on it under other enactment. The authorities even if revenue authorities were adjudicating proceedings in the context of Tenancy Act, and Section 85 of Tenancy Act expressly bars the jurisdiction of Civil Court in respect of any question which is by or under the Tenancy Act required to be dealt with by the Tribunal in revision in exercise of their powers of control.

48. The Hon'ble Apex Court in ***Mohan Lal vs Kartar Singh And Others*** (supra) held in paragraph 11 and 12 as under:

"11. Section 43 is aimed at a person who may be found by the Collector in unlawful or unauthorised possession of land because of one of the two contingencies mentioned in that section. Even if the transfer in his favour is by an act of the parties or by operation of law, if it is declared to be invalid under the provisions of the Act, the Collector can treat it as unlawful and eject him from the land. So also, a person in possession of land, if found not entitled to its use and occupation under the provisions of the Act, can also be ejected therefrom. This provision clearly indicates the intention of the legislature that it should prevail over not only the acts of the parties but operation of laws also, in the matter of transfer and possession of agricultural lands. The purpose of this provision is to see that the object of protection of tenancy rights and land reforms is fulfilled. Therefore, it confers a new right and provides a quick and effective remedy for enforcement of that right. It also confers power on the Collector to impose a penalty. The power can be exercised by the Collector suo motu. The words "under the Act" used in clauses (a) and (b) indicate the scope of enquiry and fix the ambit of the jurisdiction of the Collector to deal with cases of unlawful and unauthorised possession of the land. They also lead to the conclusion that if the nature of possession is to be determined in terms of clauses (a) and (b) then it would be a matter to be decided under the Act. The decision of the Collector made under or in pursuance of the Act has been made final in the sense that it cannot be called in question in any court. Section 47 specifically bars the jurisdiction of civil court in matters which are required to be settled, decided or dealt with by the Collector. It, therefore, becomes clear that the legislature wanted the Collector to be an exclusive forum for the matters falling within the scope of Section 43.

12. On consideration of the object of the Act the purpose of Section 43

and the bar contained in Section 47 it becomes clear that the legislature intended to oust the jurisdiction of the civil court and confer exclusive jurisdiction on the Collector in matters which fall within the scope and ambit of Section 43. As rightly contended by the learned counsel for the appellant this view would be in consonance with the principles of interpretation pointed out by this Court in Dhulabhat v. State of M.P. (Emphasis supplied)"

49. The Hon'ble Apex Court has held that exclusive jurisdiction is conferred on the Collector in matters which fall within the scope of section 43 of PEPSU and the jurisdiction of civil court in such matter is barred. The Hon'ble Apex Court was considering Section 43 of PEPSU which is *pari materia* to Section 84 of Tenancy Act, the only distinction being that Section 84 further qualifies the right to invoke Section 84 of Tenancy Act only where the provisions do not provide for eviction of such persons. There is no submission canvassed to demonstrate any provision of Tenancy Act which would provide for eviction of the Respondents in the present case.

50. The pendency of the civil proceedings does not affect the jurisdiction of the authorities under Section 84 of the Tenancy Act and on the contrary, applying the decision of the Hon'ble Apex Court, the jurisdiction of Civil Court is ousted in matters falling within the scope and ambit of summary eviction under Section 84 of Tenancy Act.

51. The Learned Member of MRT relied upon the decision of ***Dhondba Raoji Jadhao vs Krishnabai Gopalrao Raje And Another*** (supra), to support its conclusion that summary jurisdiction where machinery of civil court is already set in motion should be discouraged. In that case,

the Petitioner was held to be neither a tenant nor a person in possession in pursuance of agreement for sale. The Respondent thereafter filed civil suit for possession and also moved the Collector for summary eviction under Section 120(c) of the Tenancy Act of 1958. The Petitioner therein contended that the proceeding under Section 120 of the Tenancy Act was not maintainable especially when the dispute is of civil nature, and the Civil Suit for seeking the same relief of eviction is pending. The Court held that if there are any complicated questions either of law or of fact, the Collector would be justified in staying his hands in the matter. Pertinently, the Court relied upon the decision in ***State of Punjab And Others vs Bhai Ardaman Singh And Others*** (supra). It further held in paragraph 13 as under:

“13. It will be seen that there cannot be any dispute on the question that this is a summary remedy and order of eviction, even if passed, is subject to the result of a civil suit, and thus, even if summary eviction is ordered, the right of a party to get his right established in a civil court is not barred. Indeed, it has been held that one of the conditions attached for the exercise of powers under section 120 is that in case any doubt arises about the title of the party, the power is not to be exercised and in case any complicated question of fact and law arises, the matter has to be referred to the civil court or the parties can be left to take recourse to any other remedy that may be available. Even in Kashiram's case (cited supra), it has been clearly laid down as observed earlier that the relief granted will of this be subject to the result of the suit.”

52. It further held that normally it will not be advisable for the Collector to exercise this power in respect of a matter about which a party has already resorted to civil suit.

53. The decision does not lay down an absolute proposition of law that the jurisdiction of the authorities under the Tenancy Act is barred

but holds that the relief granted will always be subject to the result of the Suit. It needs to be noted that the decision of ***Mohan Lal vs Kartar Singh And Others*** (supra) is subsequent decision of the Hon'ble Apex Court, which will bind this Court. The Hon'ble Apex Court has held that the power under section 43 of PEPSU comprehends enquiry not only of simple nature but also enquiry involving complicated questions having bearing on nature of possession. The other distinguishing feature is that in ***Dhondba Raoji Jadhao vs Krishnabai Gopalrao Raje And Another*** (supra), the parties had already resorted to civil suit.

54. The Learned Member of MRT vide orders dated 24th June, 2013 and 1st February, 2019 had set aside the orders of SDO rejecting the applications under Section 84(c) and had remanded the matters upholding the jurisdiction of SDO and that pendency of civil suit would not create impediment in deciding the said applications. The said orders were rightly passed by MRT in light of the principles laid down by the Hon'ble Apex Court in ***Mohan Lal vs Kartar Singh And Others*** (supra). In the third round, the Learned Member of MRT has taken a completely different stand and held that SDO did not have the jurisdiction in view of pendency of the civil suit and the counter claim.

55. In light of discussion above, the impugned order of Learned Member of MRT setting aside the order of SDO dated 15th January, 2020 is clearly unsustainable. The SDO has rightly exercised the jurisdiction

under Section 84 (c) of Tenancy Act and ordered eviction and perversity in order of SDO is demonstrated. Resultantly, the impugned order dated 26th September, 2022 is hereby quashed and set aside and the order of SDO dated 15th January, 2020 is restored. Petition succeeds and Rule is made absolute.

56. Interim Application does not survive for consideration and stands disposed of.

(SHARMILA U. DESHMUKH, J.)

57. At this stage, request is made for stay of the present judgment for a period of four weeks. The said request is opposed by Mr. Walawalkar appearing on behalf of the Petitioners. As the Civil Suit is also pending, the present judgment is stayed for a period of four weeks.

(SHARMILA U. DESHMUKH, J.)