

**WP-6061-25.DOC**

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 6061 OF 2025**

1. Shobha @ Surekha Suresh Patil  
Age : 48 years, Occ.: Household  
Residing at Post Vashere, Amane  
Taluka Bhivandi, District Thane
2. Ranjana Vijay Bhoir,  
Age: 49 years, Occ.: Household  
Residing at post Itade, Tal: Bhivandi,  
District Thane.

...Petitioners

**SAINATH  
SANJAY  
BODKHE**

**Versus**

Digitally signed by  
SAINATH SANJAY  
BODKHE  
Date: 2026.09.28  
21:59:32 +0530

1. Radhika Prakash Borgaonkar  
Age: Adult, Occ.: Agriculturist
2. Amrut Prakash Borgaonkar  
Age: Adult, Occ.: Agriculture
3. Sudhir Gangadhar Borgaonkar  
Age: Adult, Occ: Agricultural  
(through their Constituted attorney)  
Mukund P. Patel  
Mukul P. Patel  
R/at- 501, Rutu Business Park,  
Off. L.B.S. Road, Majiwada,  
Thane (W) 400601.
4. Amit Prakash Borgaonkar  
Age: Adult, Occ: Agriculture  
R/o Borgaonkar Bungalow, Par Naka,  
Siddheshwar Lane, Kalyan (W),  
Thane 421301.
5. Tukaram Ragho Patil  
Age: Adult, Occ: Agriculture
6. Suresh Ragho Patil  
Age: Adult; Occ: Agriculture

Res no.3 and 4 R/o- Near Datta  
Mandir, Village Savad, P. O.  
Amane, Tal. Bhivandi, Dist. Thane.

7. Dinkar Dunda Karbhari  
(Since deceased represented by L.R.)

7.1 Bebibai Dinkar Karbhari  
Age: Adult; Occ: Agriculture

7.2 Santosh Dinkar Karbhari  
Age: Adult; Occ: Agriculture

7.3 Shivaji Dinkar Karbhari  
Age: Adult; Occ: Agriculture

7.4 Avita P Kene  
Age: Adult; Occ:

7.5 Sayali Sunil Patil  
Age: Adult; Occ:

7.6 Bharat Dinkar Karbhari  
Since deceased represented by LR

7.6.1 Anjali Bharat Karbhari  
Age: Adult; Occ: Household

7.6.2 Kunal Bharat Karbhari  
Age: Adult; Occ:

7.6.3 Jenika Bharat Karbhari  
Age: Adult; Occ:

All respondents R/o Gandhari gaon,  
Tal. Kalyan (W), Thane 421301

8. Banubai Janardhan Mhatre  
Age: Adult, Occ: Agriculture  
R/o Chinchapada, Kolsewadi  
Tal. Kalyan, Dist. Thane

9. Baban Dunda Karbhari

(since deceased through his LRs)

- 9A. Yashwant Baban Karbhari  
Age 39
- 9B. Nitin Baban Karbhari  
Age 37
- 9C. Krishna Baban Karbhari  
Age 35 R/o. Gandhari Gaon,  
Karbhari House, Kalyan (W).
- 9D. Bharti Baban Karbhari  
Age 45, R/o. Bharat Shreedhar  
Bedekar, Bedekar Bagla,  
Agasan gaon, Thane (E).
- 9E. Yogita Baban Karbhari  
@ Yogita Vinayak Gaikwad,  
Age 43, R/o. Tisgaon, Parwati  
Building, Kalyan (W).
- 9F. Lata Baban Karbhari  
@ Lata Laxman Patil  
R/o. Savad gaon, Bhiwadi  
Patil Chal.
10. Mainabai Padu Karbhari  
(Since deceased through L.R.)  
Respondent no.9, 11, 13 to 16)
11. Mahadev Padu Karbhari  
Age: Adult, Occ: Agriculture  
Res. No.8 to 10 R/o Village  
Gandhare, Tal. Kalyan, Dist. Thane
12. Rakhmabai Savlaram Tare  
(Since deceased through L.R.)
- 12.1 Gunibai Sudam Kene  
Age: Adult; Occ: Agriculture
- 12.2 Nandabai Ramesh Randhavi

Age: Adult; Occ: Agriculture

**12.3 Yashwant Savlaram Tare**

Age: Adult; Occ: Agriculture

All R/o Shivnagar (Chaudhari Pada)  
Post Lonad, Shivajinagar, Lonad  
Thane 421302

**13. Gajanan Padu Karbhari**

Age: Adult; Occ: Agriculture

**14. Vimal Krushna Mehre**

Age: Adult; Occ: Agriculture

**15. Kisan Padu Karbhari**

Age: Adult; Occ: Agriculture

**16. Gulab Shantaram Bhane**

Age: Adult; Occ: Agriculture

**17. Sitabai Harishchandra Navale**

Age: Adult; Occ: Agriculture

**18. Balaram Padu Karbhari**

Age: Adult; Occ: Agriculture  
Res. No 12 to 17 R/o Village  
Gandhare, Tal. Kalyan,  
Dist. Thane

**19. Tarabai Madhukar Karbhari**

Age: Adult; Occ: Agriculture

**20. Mahesh Madhukar Karbhari**

Age: Adult; Occ: Agriculture

**21. Kundan Madhukar Karbhari**

Res. No. 18 to 20 R/o. Anandibai  
Nivas, New Nashik Highway,  
Near Hanuman Mandir,  
Gandharigaon, Kalyan (W)

**22. Vandana Kailas Gawade**

Age: Adult; Occ: Agriculture

23. Sangeeta Madhukar Karbhari  
Age: Adult; Occ: Agriculture

24. Eknath Savlya Karbhari  
Age: Adult; Occ: Agriculture

25. Ashok Savlya Karbhari  
Age: Adult; Occ: Agriculture

26. Arun Savlya Karbhari  
Age: Adult; Occ: Agriculture

27. Vhandrabai Savlya Karbhari  
Age: Adult; Occ: Agriculture

28. Savitribai Savlya Karbhari  
Age: Adult; Occ: Agriculture

Res. No. 21 to 27 R/o Village  
Gandhare, Tal. Kalyan, Dist. Thane.

29. Tahsildar & ALT, Kalyan,  
Dist. Thane.

30. Sub-Divisional Officer,  
Kalyan, Dist. Thane.

31. State of Maharashtra

----- ...Respondents  
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Mr. Shriram S Kulkarni, i/b Mr. Sujay Palshikar, for the  
Petitioners.

Mr. Ashutosh Kumbhakoni, Senior Advocate, Mr. Amrut Joshi,  
Mr. Rakesh Misar, Mr. Vivek Rajpurohit, i/b RVM Legal,  
for Respondent Nos.1 to 4.

Ms. Shivani Kondekar, a/w Ms. Vidya Doke, for Respondent  
Nos.5 & 6.

Mr. Ajit Savagave, for Respondent No.9A-F & 19 - 23.

Smt. Savita Prabhune, AGP for Respondent Nos.29-31 – State.

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CORAM : N. J. JAMADAR, J.  
RESERVED ON : 08<sup>th</sup> SEPTEMBER 2026  
PRONOUNCED ON : 28<sup>th</sup> SEPTEMBER 2026

**JUDGMENT:**

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

2. By this petition under Article 227 of the Constitution of India, the petitioners assail the legality, propriety and correctness of a judgment and order dated 12<sup>th</sup> February, 2025, passed by the learned President, Maharashtra Revenue Tribunal, Mumbai (“MRT”) in Revision Application No.TNC/REV/THN/63/2021 whereby the revision application preferred by the Respondent Nos.1 to 3/landlords against an order passed by the Sub-Divisional Officer, Kalyan in Tenancy Appeal No.38/2019, thereby setting aside the order dated 18<sup>th</sup> April, 2012 passed by the Tahsildar and Agricultural Land Tribunal (“ALT”) in Tenancy Case No.08/2012 directing the deletion of the names of the predecessor-in-title of the petitioners as the tenants in respect of the land bearing Survey No.11/3/3/6 admeasuring 89.4R (“subject land”) purportedly

in the exercise of the power under Section 70(b) of the Maharashtra Tenancy and Agricultural Lands Act, 1948 ("MT and AL Act, 1948"), came to be allowed by setting aside the order passed by the SDO.

**3.** Shorn of superfluities, the background facts leading to this petition, can be stated as under :-

**3.1** Maltibai Gangadhar Borgaonkar, the predecessor-in-title of the Respondent Nos.1 to 4, was the original holder of the subject land.

**3.2** Dunda Kolya Karbhari was the grandfather of the petitioners. Dunda Karbhari was the tenant alongwith the other co-tenants in respect of the subject land. Vide Mutation Entry No. 80, certified on 27<sup>th</sup> September, 1956, the names of Dunda Karbhari and others were recorded in the record of rights of the subject land as tenants since 1954-1955.

**3.3** The petitioners claimed, Dunda Kolya Karbhari passed away on 07<sup>th</sup> January, 1971. He left behind his widow Anandibai Dunda Karbhari and five children including Lilabai Ragho Patil/Mhatre. The names of the children of Dunda Karbhari and Anandibai including Lilabai were mutated to the

record of rights of the subject land, vide Mutation Entry No. 161, certified on 29<sup>th</sup> March, 1971. Lilabai Ragho Patil/Mhatre was the mother of the petitioners and their brothers, namely, Tukaram Ragho Patil (R-5) and Suresh Ragho Patil (R-6).

**3.4** After the demise of Anandibai on 12<sup>th</sup> April, 1985, the names of her children including Lilabai were mutated to the record of rights of the land bearing Survey No.11/3/3/6 (part) vide Mutation Entry No.928.

**3.5** The petitioners further claimed, after Lilabai passed away on 05<sup>th</sup> October, 1999, vide Mutation Entry No.966, the names of the petitioners and Respondent Nos.5 and 6 were mutated to the record of rights of other lands. However, the subject land was not included therein.

**3.6** On 20<sup>th</sup> May, 2011, the petitioners assert, the Respondent Nos.1 to 4 executed a registered sale deed purporting to sell the subject land in favour of Mukund Pratap Patel and Mukul Pratap Patel. On the strength of the said instrument and the purported power of attorney, the said Mukund P. Patel and Mukul P. Patel filed a number of applications, including Tenancy Case No.08/2012, before the ALT seeking a negative declaration that, deceased Dinkar Dunda Karbhari, the

predecessor-in-title of the Respondent Nos. 7.1 to 7.6.3, Banubai Janardhan Mhatre (R-8) and deceased Lilabai, who was impleaded through Takaram Patil (R-5) and Suresh Patil (R-6) as her only legal representatives, were not the tenants in respect of the subject land and thus their names be deleted from the record of rights of the subject land.

**3.7** In the said proceedings, one Sanjay Shantaram Kankose filed an affidavit-in-reply in the capacity of the power of attorney of Tukaram Patil (R-5) and Suresh Patil (R-6) and conceded the claim of the purported landlords and gave no objection to the deletion of the names of the respondents therein from the record of rights of the subject land.

**3.8** On the basis of the said affidavit-in-reply, the ALT was persuaded to allow the said application and direct the deletion of the names of the respondents therein from the record of rights of the subject land.

**3.9** Being aggrieved, the petitioners preferred an appeal before the Sub-Divisional Officer, Kalyan. After one round of remand, in Tenancy Appeal No.38/2019, the Sub-Divisional Officer, Kalyan was persuaded to allow the appeal holding, *inter alia*, that the petitioners who are the daughters of the

deceased Lilabai were not impleaded in the said application under Section 70(b) of the MT and AL Act, 1948, though the names of the petitioners appeared in the record of rights of the agricultural lands held by Lilabai. Thus, the ALT ought to have dismissed the application on the ground of non-joinder of necessary parties. Moreover, the ALT had not examined the issue as to whether the petitioners and other co-tenants were the tenants in respect of the subject land in accordance with the provisions of the MT and AL Act, 1948. There was nothing to indicate that, the tenancy was either terminated by surrender in accordance with the provisions of Section 15 of the MT and AL Act, 1948, and the landlord had obtained the possession of the subject land after termination of the tenancy in accordance with the provisions contained in Section 31 of the MT and AL Act, 1948. Thus, the declaration made by the ALT was completely illegal.

**3.10** Being aggrieved, the Respondent Nos.1 to 3 preferred the revision before the MRT under Section 76 of the MT and AL Act, 1948.

**3.11** By the impugned judgment and order, the learned President, MRT was persuaded to allow the revision. The learned President, MRT was of the view that, all legal heirs of the deceased Dunda Karbhari except the petitioners had stated in writing before the ALT that they were not in possession and cultivation of the subject land. Since the petitioners were the granddaughters of late Dunda Karbhari, it was very unlikely and impossible that, the petitioners were in cultivation of the subject land. As the Sub-Divisional Officer did not properly appreciate this fact, the order passed by the Sub-Divisional Officer suffered from an error of law warranting interference in the exercise of the revisional jurisdiction, ratiocinated the learned President, MRT.

**3.12** Being aggrieved and dissatisfied, the petitioners have invoked the writ jurisdiction of this Court.

**3.13** An affidavit-in-reply has been filed on behalf of the Respondent Nos. 1 to 4 in support of the impugned judgment and order.

**4.** I have heard Mr. Shriram Kulkarni, the learned Counsel for the petitioners, Mr. Ashutosh Kumbhakoni, the learned

Senior Advocate for the Respondent Nos.1 to 4, Ms. Shivani Kondekar, the learned Counsel for Respondent Nos. 5 and 6, Mr. Ajit Savagave, the learned Counsel for Respondent Nos. 9 and 19 to 23 and Smt. Savita Prabhune, the learned Counsel for Respondent Nos. 29 to 31 – State. The learned Counsel for the parties took the Court through the order passed by the Authorities below and the material on record.

5. Mr. Shriram Kulkarni, the learned Counsel for the petitioners, took a slew of exceptions to the impugned judgment and order. Firstly, the MRT in exercise of its limited jurisdiction, could not have interfered with the well reasoned order passed by the Appellate Authority. Secondly, Mr. Kulkarni would urge, the MRT committed a grave error in law in delving into the factual aspects and setting aside the order passed by the Sub-Divisional Officer on that score. Thirdly, the fact that the petitioners are the daughters of late Lilabai and the names of the petitioners were mutated to the record of rights of other lands left behind by late Lilabai alongwith the Respondent Nos.5 and 6, was not in dispute. Yet the Respondent Nos.1 to 4 the purported landlords filed an application seeking a declaration under Section 70(b) of the MT and AL Act, 1948 without impleading the petitioners as party respondents to the

said application. On that count alone, the order passed by the ALT was required to be interfered with and, thus, the Sub-Divisional Officer was fully justified in holding that, the application before the ALT was bad for non-joinder of necessary parties. Fourthly, Mr. Kulkarni submitted with a degree of vehemence that as late Dunda Karbhari was in cultivation of the subject land on the tiller's day, the vested statutory rights could not have been defeated by resorting to the subterfuge of seeking a direction for the deletion of the names of tenants from the record of rights of the subject land. Lastly, taking the Court through the record of proceedings before the ALT, especially the institution of the application by the purported power of attorney holders in whose favour the subject land was already unlawfully sold, and the filing of the affidavit on behalf of the tenants by the purported power of attorney, Mr. Kulkarni would urge that, the proceedings before the ALT were not bona fide.

6. Per contra, Mr. Ashutosh Kumbhakoni, the learned Senior Advocate for Respondent Nos.1 to 4, laid emphasis on the fact that, the petitioners cannot be permitted to draw mileage from their non-impleadment in the application before the ALT as the names of the petitioners were not entered in the

record of rights as the legal heirs of the late Lilabai qua the subject land. Attention of the Court was invited to the Mutation Entry No. 966, which does not include the subject land. Mr. Kumbhakoni would thus urge that, the contention that the Respondent Nos.1 to 3 had not designedly impleaded the petitioners as the party respondents to the Tenancy Application No. 08/2012 in their capacity of the legal representatives of late Lilabai, cannot be countenanced.

7. Even otherwise, Mr. Kumbhakoni would urge, the mere fact that the petitioners are the daughters of late Lilabai, one of the daughters of deceased Dunda Karbhari, by itself, does not establish the juridical status of the petitioners as the tenants qua the subject land. Taking the Court through the provisions contained in Section 40 of the MT and AL Act, 1948 which provides for the continuance of tenancy upon the death of tenant, especially the legislative change brought about by Act No.13 of 1956, in the matter of heritability of the tenancy, Mr. Kumbhakoni, assiduously urged that, post the 1956 Amendment, the landlord shall be deemed to have continued the tenancy in favour of such heir or heirs of the deceased tenant as may be willing to continue the tenancy.

8. In the case at hand, according to Mr. Kumbhakoni, there is not an iota of material to show that, late Lilabai the predecessor-in-title of the petitioners or after the demise of late Lilabai the petitioners had conveyed their willingness to continue the tenancy. Mr. Kumbhakoni would urge, willingness to continue the tenancy is an essential statutory qualification and in the absence of material to demonstrate such willingness, the mere fact that the petitioners are the heirs of late Lilabai is of no significance. To this end, Mr. Kumbhakoni placed reliance on the judgment of the Supreme Court in the case of *Vithal Dattatraya Kulkarni & ors. Vs. Smt. Shamrao Tukaram Power & ors.*<sup>1</sup>, and a full Bench judgment of this Court in the case of *Vasant Hariba Londhe Vs. Jagannath Eamghandra Kulkarni*<sup>2</sup>.

9. Mr. Kumbhakoni further submitted that, this Court in the exercise of its supervisory jurisdiction need not interfere with the impugned judgment and order as there is overwhelming material to show that, all the other heirs have unequivocally admitted the fact that, they were not in cultivation of the subject land. Laying emphasis on the affidavit

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**1** (1979) 3 SCC 212

**2** 1969 Mh.L.J. 249

filed on behalf of the Respondent Nos. 5 and 6 that since decades they and their family members were not in cultivation of the subject land, Mr. Kumbhakoni submitted that, there is no substantial failure of justice. Nor can it be said that, the petitioners have been deprived of their rights.

10. I have given careful consideration to the submissions canvassed across the Bar.

11. To begin with, by and large, the following facts appear to be rather incontrovertible. First, the predecessor-in-title of the Respondent Nos.1 to 4 was the original holder of the complete and undivided land bearing Survey No.11/3. Secondly, the fact that the name of Dunda Kolya Karbhari came to be mutated to the record of rights of the subject land vide Mutation Entry No.80 as a tenant who had been in the occupation of the subject land alongwith the co-tenants since the year 1954-1955. Thirdly, it is not much in dispute that, late Dunda Karbhari passed away on 07<sup>th</sup> January, 1971 and the names of his widow Anandibai and children including Lilabai, the mother of the petitioners and Respondent Nos. 5 and 6, came to be mutated to the record of rights of the subject land on 29<sup>th</sup> March, 1971. Fourthly, upon the demise of Anandibai, the

names of her children including Lilabai came to be mutated to the land bearing Survey No.11/3/3/6 (part). Fifthly, though after the demise of Lilabai on 05<sup>th</sup> October, 1999, the names of the petitioners and Respondent Nos. 5 and 6 were mutated to the other lands left behind by late Lilabai, vide Mutation Entry No.966, yet the subject land was not included therein. Lastly, it is indisputable that in the Application No.08/2012 purportedly seeking a negative declaration, the petitioners were not impleaded as the legal heirs of late Lilabai.

**12.** Evidently, the ALT had passed the order on 18<sup>th</sup> April, 2012 in the said Application No.08/2012 solely on the basis of the affidavit-in-reply filed on behalf of the purported power of attorney of Respondent Nos.5 and 6. The ALT had not embarked upon any inquiry and proceeded to record the findings solely on the strength of the contentions in the said affidavit.

**13.** The Sub-Divisional Officer was of the view that, the ALT could not have decided the application under Section 70(b) of the MT and AL Act, 1948, when a negative declaration was sought without providing an opportunity of hearing to the legal heirs of late Lilabai and conducting an inquiry to decide the

question of tenancy in the light of the governing provisions of the MT and AL Act, 1948.

14. The learned President, MRT found the aforesaid approach of the Sub-Divisional Officer unsustainable. The fact that all the other heirs of the original tenants had conceded that, they were not in the cultivation and possession of the parcels of the land bearing Survey No.11/3, seems to have predominantly weighed with the learned President, MRT. It was also observed that, it appeared to be improbable that, the petitioners, who were the granddaughters of late Dunda Karbhari, would continue to cultivate the subject land.

15. Whether the aforesaid approach of the MRT is justifiable ?

16. The first issue that wrenches to the fore is, whether the MRT could have intervened with the order passed by the Sub-Divisional Officer in the exercise of its revisional jurisdiction. It would thus be necessary to appreciate the nature of the revisional jurisdiction exercised by the MRT under Section 76 of the MT and AL Act, 1948.

17. Section 76 of the MT and AL Act, 1948, reads as under :-

**“S. 76. Revision :**

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

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

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

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

(2) In deciding applications under this section the [Maharashtra Revenue Tribunal] shall follow the procedure which may be prescribed by rules made under this Act after consultation with the [Maharashtra Revenue Tribunal].”

**18.** The text of Section 76(1) makes it explicitly clear that, the MRT is conceived as a Tribunal of limited jurisdiction. The grounds on which MRT may entertain a challenge to, and, if found necessary, interfere with, an order passed by the Collector have been spelled out in clear and unambiguous terms by clauses (a) to (c). It needs no emphasis that, the jurisdiction of MRT is circumscribed by the grounds specified in clauses (a) to (c) of the MT and AL Act, 1948.

19. At this juncture, it is necessary to keep in view the distinction between revisional and appellate jurisdiction. In the case of *The State of Kerala Vs. K. M. Charia Abdulla & Co.*<sup>3</sup>, the Supreme Court has expounded the distinction between the appellate and revisional jurisdiction in the following words :-

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

(emphasis supplied)

20. A profitable reference can also be made to a Constitution Bench judgment in *Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh*<sup>4</sup>, wherein while construing the revisional power of the High Court, under the State Rent Control legislations, the Supreme Court adverted to, and explained, the distinction

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**3** AIR 1965 SC 1585

**4** (2014) 9 SCC 78

between appellate and revisional jurisdiction. The relevant part of paragraph 28 reads as under :-

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

(emphasis supplied)

**21.** In the light of the aforesaid enunciation of law on the aspect of fundamental distinction between the appellate and revisional jurisdiction, if the nature of the revisional power conferred on the MRT under Section 76 of the MT and AL Act, 1948 is considered, it becomes evidently clear that, the legislature has not vested in the MRT, a general power of revision. Instead, the revisional jurisdiction is explicitly confined to what can properly be termed as errors of law or substantial defect in procedure resulting in miscarriage of justice.

**22.** In the case of *Rahimatulla Rahiman Sarguru Vs. Bapu Hari Mane & anr.*<sup>5</sup>, a three-Judge Bench of the Supreme court after adverting to the grounds as enumerated in Section 76(1) of the MT and AL Act, 1948, on which the revisional power can be exercised by the MRT postulated that the power of revision entrusted to the MRT under Section 76 of the MT and AL Act, 1948, are practically identical with the second appellate powers of the High Court under Section 100 of the Code of Civil Procedure, 1908 before it was amended by Act 104 of 1976. The aforesaid position was also highlighted by a three-Judge Bench of the Supreme Court in the case of *Maruti Bala Raut Vs.*

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**5** AIR 1979 SC 1326

***Dashrath Babu Wathare & ors.***<sup>6</sup>

**23.** Keeping in view the aforesaid rigor of Section 76 of the MT and AL Act, 1948, the justifiability of interference by the MRT is required to be appreciated. The first ground which weighed with the Sub-Divisional Officer to interfere with the order passed by the ALT was that, the petitioners were not impleaded as the party respondents to the application, though the record of rights indicated that the petitioners alongwith the Respondent Nos.5 and 6 had succeeded to the estate of late Lilabai. These findings of the Sub-Divisional Officer appeared to be rather impeccable. The landlord could not have taken refuge under Mutation Entry No.966, whereby the names of the petitioners and Respondent Nos.5 and 6 were mutated to the lands left behind by late Lilabai except the subject land.

**24.** The learned President, MRT, has not found any fault with the aforesaid findings of the Sub-Divisional Officer. On the contrary, the learned President, MRT, proceeded to overturn the order passed by the Sub-Divisional Officer, on the ground that, all other legal heirs of the original tenant except the petitioners had stated in writing before the ALT that they were

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**6** AIR 1974 SC 2051

not in possession and cultivation of the subject land. In the process, however, the learned President, MRT lost sight of the very pertinent observations made by the Sub-Divisional Officer that the ALT has not examined whether the tenancy came to be terminated in consonance with the provisions MT and AL Act, 1948.

**25.** Both the ALT as well as the MRT appeared to have committed a manifest error in law in not appreciating the consequences that emanated from the possession and cultivation of the land bearing Survey No.11/3/3/6 by late Dunda Karbhari on the tiller's day. As noted above, the name of late Dunda Karbhari came to be mutated to the record of rights of the land bearing Survey No.11/3/3/6 on 27<sup>th</sup> September, 1956 as a tenant thereof for being in cultivation of the subject land since 1954-1955. Dunda Karbhari passed away on 07<sup>th</sup> January, 1971.

**26.** At this juncture, it is pertinent to note that in the Tenancy Case No.08/2012, it was nowhere the case of Respondent Nos.1 to 4 that late Dunda Karbhari was not a tenant in respect of the subject land on the tiller's day. On the contrary, it was asserted that, the name of Anandibai, the widow of late Dunda Karbhari was mutated to the record of

rights of the subject land as a tenant thereof and after her demise the names of the respondents therein namely Dinkar Karbhari, Banubai Mhatre and late Lilabai were mutated as the legal heirs of Anandibai and those entries be deleted. It thus becomes absolutely clear that, as of the tiller's day Dunda Karbhari was in possession and cultivation of the subject land and continued to possess the subject land till his demise in 1971. The aforesaid facts completely alter the nature of the jural relationship between the tenants and the erstwhile landlord.

**27.** In view of the provisions contained in Section 32 of the MT and AL Act, 1948, on the tiller's day, every tenant shall subject to other provisions of that section and the succeeding sections, be deemed to have purchased from his landlord, free of all encumbrances subsisting thereon on the said day, the land held by him as a tenant, provided certain conditions are fulfilled. The title of the landlord to the land passes immediately to the tenant on the tiller's day. The title of the land which was vested originally in the landlord passes to the tenant on the tiller's day or the alternative period prescribed in that regard. The title so transferred is defeasible only in the event of the tenant failing to appear or making a statement that

he is not willing to purchase the land or committing default in payment of price thereof as determined by the Tribunal.

28. The aforesaid position was expounded by the Constitution Bench of the Supreme Court in the case of *Sri Ram Ram Narain Medhi Vs. State of Bombay*<sup>7</sup> which reads as under :-

“41. .... The title of the landlord to the land passes immediately to the tenant on the tiller's day and there is a completed purchase or sale thereof as between the landlord and the tenant. The tenant is no doubt given a locus penitentie and an option of declaring whether he is or is not willing to purchase the land held by him as a tenant. If he fails to appear or makes a statement that he is not willing to purchase the land, the Tribunal shall by an order in writing declare that such tenant is not willing to purchase the land and that the purchase is ineffective. It is only by such a declaration by the Tribunal that the purchase becomes ineffective. If no such declaration is made by the Tribunal the purchase would stand as statutorily effected on the tiller's day and will continue to be operative, the only obligation on the tenant then being the payment of price in the mode determined by the Tribunal. If the tenant commits default in the payment of such price either in lump or by installments as determined by the Tribunal, S.

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**7** AIR 1959 SC 459

32M declares the purchase to be ineffective but in that event the land shall then be at the disposal of the Collector to be disposed of by him in the manner provided therein. Here also the purchase continues to be effective as from the tiller's day until such default is committed and there is no question of a conditional purchase or sale taking place between the landlord and tenant. The title to the land which was vested originally in the landlord passes to the tenant on the tiller's day or the alternative period prescribed in that behalf. This title is defeasible only in the event of the tenant failing to appear or making a statement that he is not willing to purchase the land or committing default in payment of the price thereof as determined by the Tribunal. The tenant gets a vested interest in the land defeasible only in either of those cases and it cannot therefore be said that the title of landlord to the land is suspended for any period definite or indefinite. If that is so, there is an extinguishment or in any event a modification of the landlord's right in the estate well within the meaning of those words as used in Art.31A (1)(a)."

(emphasis supplied)

29. In the case of *Amrit Bhikaji Kale & ors. Vs. Kashinath Janardhan Trade & anr.*<sup>8</sup>, after following the aforesaid pronouncement, the Supreme Court enunciated that, it is

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**8** (1983) 3 SCC 437

unquestionably established that on the tiller's day, the landlord's interest in the land gets extinguished and simultaneously by a statutory sale without anything more by the parties, the extinguished title of the landlord is kindled or created in the tenant. That very moment the landlord-tenant relationship as understood in common law or Transfer of Property Act comes to an end. The link and chain is broken. The absent non-cultivating landlord ceases to have that ownership element of the land and the cultivating tenant, the tiller of the soil, becomes the owner thereof. Without any act of transfer inter vivos the title of the landlord is extinguished and is created simultaneously in the tenant making the tenant the deemed purchaser.

30. The ALT as well as the learned President, MRT completely ignored the salient statutory change brought about by the Amending Act, 15 of 1957. Those authorities proceeded on the premise, as if there was no legislative intervention and deemed transfer of ownership. Instead of examining the issue from the perspective of the lawful termination of the tenancy, given the admitted position that Dunda Karbhari was in possession and cultivation of the subject land as of the tiller's day, the learned President, MRT misdirected himself in delving into the question

of facts as regards the import of the statements by the other legal heirs of the original tenant that they were not in possession and cultivation of the subject land. The learned President, MRT clearly exceeded the limits of revisional jurisdiction in venturing into the thicket of facts.

**31.** The submission of Mr. Kumbhakoni premised on Section 40 of the MT and AL Act, 1948, is not required to be delved into elaborately. Once it is established that, late Dunda Karbhari was in cultivation and possession of the subject land on the tiller's day and he passed away in the year 1971, the entire complexion of the controversy changes. Even otherwise, the Mutation Entry No. 161 clearly records that, the name of late Lilabai, the predecessor-in-title of the petitioners, came to be mutated to the subject land upon the demise of Dunda Karbhari in the year 1971. The said Mutation Entry manifests the intention of Anandibai and all her children to continue the tenancy, even if one were to proceed on the premise that, late Dunda Karbhari did not become the deemed purchaser of the subject land on the tiller's day. In any event, none of the authorities below have examined and discarded the claim of the petitioners on the ground that, there was no material to show that, the petitioners had not shown willingness to

continue as the tenants.

**32.** The learned President, MRT, seems to have committed a grave error in recording the finding on the basis of the statements made by the other successors in interest of late Dunda Karbhari that they were not in possession and cultivation of the subject land. In the process, the learned President, MRT, completely lost sight of the fact that the MT and AL Act, 1948 frowns upon divesting the tenant of the possession of the agricultural land otherwise than in accordance with the provisions contained in the MT and AL Act, 1948. It is pertinent to note in the affidavit filed on behalf of the respondent Nos.5 and 6 in the Tenancy Case No.08/2012, it was affirmed by the Power of Attorney that, the purported tenancy rights in the subject land were released in favour of the landlord after obtaining consideration from them.

**33.** Suffice to note that, section 15 of the MT and AL Act, 1948 specifically addresses the anxiety of the legislature in ensuring that the tenant is not dispossessed of the land on the spurious plea that the tenant voluntarily surrendered the land. The proviso to section 15(1), ordains in emphatic terms that the voluntary surrender by the tenant shall be in writing, and

verified before the Mamlatdar in the prescribed manner. Conversely, section 29(2) injuncts the landlord from obtaining possession of the land held by the tenants except under an order of the Mamlatdar. Evidently, it is not the claim of the landlord that, in the case at hand, the tenant had surrendered the possession of the suit lands in conformity with, and observance of, the provisions contained in sections 15 and 29 MT and AL Act, 1948.

**34.** A useful reference, in this context, can be made to a judgment of a three-Judge Bench of the Supreme Court in the case of *Babu Parasu Kaikadi (Dead) By LRs. Vs. Babu (Dead) through LRs*<sup>9</sup>. In the said case, the jural relationship between the parties thereto as the landlord and tenants was not disputed. It was also not disputed that the tenants therein had voluntarily surrendered the land to the landlord; however, the said surrender was not in terms of sections 15 and 29 of the MT and AL Act, 1948. The Supreme Court, in the light of the aforesaid facts, considered the question: "Whether the voluntary surrender which is not in terms of sections 15 and 29 is a valid one?" After advertng to the provisions contained in sections 15 and 29 of the Act, 1948, the Supreme Court

**9** (2004) 1 SCC 681

expounded the legal position as under :-

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

6. Section 29 of the Act, as noticed hereinbefore, postulates taking over of possession by the landlord from the tenant only in accordance with procedure prescribed therefor. In the event, the surrender made by the predecessor-in-interest of the appellant in favour of the respondent is found to be invalid; the possession thereof obtained by the later pursuant to or in furtherance thereof shall also be invalid. In such an event, although the landlord takes a physical possession of the land, the right to possess the same remains with the tenant. He could recover possession of the said land in accordance with law. The said Act is a beneficent statute. It should be construed in

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

(emphasis supplied)

**35.** In the backdrop of the aforesaid clear and explicit enunciation of the legal position, and the express mandate of the provisions contained in sections 15 and 29 of the MT and AL Act, 1948, the learned President, MRT was not at all justified in recording the finding on the basis of the statements of the other legal heirs of Dunda Karbhari that they were not in possession of the subject land.

**36.** For the foregoing reasons, the impugned judgment and

order passed by the learned President, MRT deserves to be quashed and set aside.

**37.** Hence, the following order :-

**:: O R D E R ::**

- (i) The Writ Petition stands allowed.
  - (ii) The impugned order dated 12<sup>th</sup> February, 2025, stands quashed and set aside.
  - (iii) The order dated 08<sup>th</sup> June, 2020 passed by the Sub-Divisional Officer in Tenancy Appeal No.38/2019 stands restored and the Tenancy Case No.08/2012 stands dismissed.
  - (iv) Rule made absolute in the aforesaid terms.
- No costs.

**[N. J. JAMADAR, J.]**