

**BEFORE THE MEMBER (JUDICIAL), MAHARASHTRA REVENUE TRIBUNAL,
BENCH AT PUNE.**

Presided over by : V.B.Kulkarni, Member (Judicial)

No.P/IX/1/2017

Shri Govind Kalu Karke
D/H—Shri.Tukaram Haribhau Karke & otrs.2
Through—POA—Shri.Sandeep Dattatray Shelar,
R/o.Jevarewadi, Po.Vehergaon,
Tal.Mawal, Dist.Pune.

.....Applicants

VS.

- 1) The State of Maharashtra
Through—The Collector, Pune.
- 2) Shri.Sitaram Chindhu Shelar,
R/o.Karandoli, Po.Vehergaon,
Tal.Mawal, Dist.Pune.

.....Respondents

**Revision Application U/s 76 of
the B.T.& A.L.Act,1948.**

Appearance :- Adv. Shri J.P.Dhaytadak for Revision Applicants.
Nobody for Respondent No.1
Respondent No.2 in person.

DATE:- 30th OCTOBER, 2018

JUDGMENT

Being aggrieved by the judgment & order passed by Ld.appellate tribunal i.e. Sub-Divisional Officer, Mawal Sub Dn.Pune (hereinafter referred as the "appellate tribunal") in Tenancy Appeal No.41/2016, dt.7/7/2017, the aggrieved tenant in possession has preferred the present revision application by invoking the provisions of Sec.76 of B.T.& A.L.Act, 1948 (hereinafter referred "the Act"), on the grounds more particularly set out in revision application. Facts giving rise to the present revision application can be summarized as under.

2. The disputed land bearing S.No.10/1 situated at Village Karandoli, Tal.Mawal, was originally owned by Shri.Digambar Khire. The said land was in possession of Shri.Govind Karke, as the tenant in possession since prior to the "tillers' day". After the implementation of provisions of Sec.32 & 32G of the Act, and by order dt.24/6/1962 price has been fixed in favour of the tenant u/s 32G of the Act. In the year 1979 it was found to the tribunal below i.e. ALT, that the land was in possession of Shri.Sitaram Chindhu Shelar, since after 1971 onwards. The Ld.trial tribunal come to the conclusion that the said act amounts contravention of Sec.84C of the Act, and thereby, forfeited the disputed land to the Government by order dt.9/11/1979. After the order passed in tenancy file No.SR/84C, name of the Government was entered in the column of occupancy. Thereafter, the applicant being aggrieved by the said orders passed by the tribunals below, preferred an appeal before the Ld.appellate tribunal bearing No.41/2016. While deciding the appeal on merit, Ld.appellate tribunal come to the conclusion that appeal being devoid with merits and delayed by limitation deserves to be dismissed. With these observations, Ld.appellate tribunal has dismissed the appeal.

3. After the receipt of R&P from both the tribunals below, heard Ld.Adv.Shri.J.P.Dhaytadak for the applicant. Opponent No.2 has appeared in the proceedings and submitted consent petition to pass the order in favour of the applicant by denying his any interest in the suit property. On behalf of the State nobody has appeared despite of effective service. Therefore, after considering the submissions made by the advocate for the applicant and consent petition moved by the opponent No.2, following points arise for my determination. I have recorded my findings with reasons thereon as under :-

<u>Points</u>	<u>Findings</u>
1. Whether the judgment & order passed by the Ld.appellate tribunal is legal, proper and correct on facts as well as Law points involved therein?	Negative
2. Whether the judgment & order passed by the Ld.appellate tribunal was passed within its jurisdiction within a reasonable time? If not, what order?	No, As per final order

Reasons

4. Point No.1&2: After perusing the order passed by both the tribunals below, it has become evident that, initially the disputed land was the tenanted land in possession of the applicant. The proceedings u/s 32G of the Act, in respect of the said property reached to its finality by order dt.24/6/1962. In that context, it is pertinent to note here that, for the year 1971-72 entry in the column of cultivation came to be certified on the basis of statement

recorded by the revenue authority. While considering the legality of the said proceedings at the outset, I may state here that, the proceedings of enquiry in respect of column of cultivation conducted by revenue authorities in the year 1972 and decided as such, by order dt.18/1/1972. Date of decision itself indicates that the enquiry has been conducted by the officer below the rank of Tabhsildar and that has been reflected other rights column for the year 1971-72 only. By that time the provisions of Rules made under Maharashtra Land Revenue Record of Rights (Preparation and Maintenance) Rules, 1971, were already came into force. Therefore, such enquiry by making entry in remarks column is not permissible unless such enquiry is required to be conducted by the officer not below the rank of Tahsildar. In short, certification of entry in column of remarks for the year 1971-72 by the officer below the rank of Tahsildar, is without jurisdiction.

5. Secondly, whether that entry is supported by the conduct of the parties and subsequent possession of respondent No.2 over the disputed property remains the matter for enquiry. On this touchstone, after perusing the record and particularly, the say filed by the respondent No.2 in the present revision application is self-explanatory that, neither the so called person was ever in possession of the property in legal sense nor he has claim therein. The say filed thereto dt.4/4/2018 self-explanatory wherefrom material recitals runs as under:

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6. There admissions made in the say throughout in the /is are sufficient to hold that the certification of entry in the column of remarks for the particular year is not based either on enquiry or documentary evidence and as such fallow in eye of Law.

7. Thirdly, it is pertinent to note here that, the tribunals below can invoke the provisions u/s 84C of the Act, either sou-moto or on the application of any person interested only, if he believes that the transfer or acquisition is invalid under any of the provisions of this Act. Herein this case, admittedly, there is no transfer. Therefore, the issue remains for my consideration, as to whether the mere possession of respondent No.2 will amount an "acquisition, interest" in the property, so as to invoke Sec.84C of the Act? Answer is "No". Creation of original title frequently depends on the extinction of another title. Acquisition of property means the of right of one party in the property and conferment of the said right in favour of another party. "Acquisition" refer to

take over of the property one by another any entity. Mere delivery of possession, without creating interest in the property does not amount acquisition within the meaning of Sec.84C of the Act. In that context, if at all possession is admitted or proved that will amounts creation of new relationship under the Tenancy Act, but, does not amounts acquisition as referred u/s 84C of the Act. On this touchtone also, there is no necessity for the tribunals below to invoke the powers u/s 84C of the Act.

8. Last but not the least, point remains for consideration is that of the jurisdiction of the tribunal to pass the impugned order. On this touchtone, at the outset I may state here that the provisions u/s 3 of Limitation Act, bars the jurisdiction of the Court / Tribunal, to take cognizance of any time barred proceedings. In that context, it is well settled principle of law, that the provisions of Sec.84C of the Act, nowhere contemplates Law of limitation, so as to initiate the proceedings. However, inview of Law laid down by our Hon'ble Supreme Court, in the case of ***Mohamad Kavi Vs. Fatimabai Ibrahim, reported in 1997 (6) SCC-71***, followed in subsequent number of precedents. It has been ruled that, while invoking powers u/s 84C of the Act, the authority shall have to invoke such powers within a '*reasonable time*' or otherwise it will be a cognizance taken without jurisdiction. In support of above observations I may keep reliance on the following precedents.

- (i) *Mohamad Kavi Vs. Fatmabai Ibrahim, reported in 1997(6) SCC-71*
- (ii) *Bhaniben Tandel Vs. State of Gujarat, reported in AIR 1991 Guj.184*

The proposition of Law laid down in those precedents can be summarized as under:

"Where no time limit is prescribed for exercise of a power under a Statute it does not mean that it can be exercised at any time; such power has to be exercised within a reasonable time".

9. After going through the precedents referred supra and guidelines laid down therein, I hold that the action taken by the Ld.trial tribunal and upheld by the Ld.appellate tribunal, being not initiated within '*reasonable time*', does not sustain in eye of Law, and therefore, deserves to be set aside. With these observations, I answer the 'Point No.1 in negative & Point No.2 as per final order' and proceed to pass the following order.

ORDER

The revision application is hereby allowed.

The judgment & order passed by the tribunal below is hereby set aside.

No order as to costs.

R&P received from the tribunals below be sent back immediately.

Intimation of this order be sent to both the parties & lower tribunals.