

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

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

**No.79/B/2001/KP**

Shri Vishnu Bhau Patil

D/H---

- 1) Smt.Savitribai Vishnu Patil ( through LRs 2 to 5)
- 2) Shri.Ananda Vishnu Patil
- 3) Shri.Hindurao Vishnu Patil  
D/H---
  - 3a) Smt.Laxmi Hindurao Patil
  - 3b) Shri.Prakash Hindurao Patil
  - 3c) Akkatai Akaram Patil
  - 3d) Ranjana Dilip Patil
- 4) Shri.Sadashiv Vishnu Patil
- 5) Shri.Mahadev Vishnu Patil

All R/o.Beale, Tal.Karveer, Dist.Kolhapur.

.... Applicants

**VS.**

Shri.Balasaheb Godajirao Bhosale (through LRs)

- 1) Smt.Sulochana Balasaheb Bhosale
- 2) Shri.Ramesh Balasaheb Bhosale
- 3) Shri.Ashok Balasaheb Bhosale  
D/H---
  - 3a) Smt.Sangita Ashok Bhosale
  - 3b) Ashwini Ashok Bhosale
  - 3c) Akshy Ashok Bhosale
- 4) Smt.Pushpa Vasant Phadatare

All through their POA—Shri.Babasaheb Jaisingrao Desai,  
R.o. Savarde, Tal.Hatkanangale, Dist.Kolhapur.

.... Respondents

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

Appearance :- Adv. Shri Banwalikar for Revision Applicants.  
Adv. Shri S.B.Desai for Respondents

**DATE:- 10<sup>th</sup> MARCH, 2017**

## **JUDGMENT**

1. Being aggrieved by the judgment & order passed by Ld.appellate tribunal i.e. Sub-Divisional Officer, Karveer Sub Dn., Kolhapur (hereinafter referred as the "SDO") in Tenancy Appeal No.29/2000, dismissing the appeal by order dt.13/6/2001, the aggrieved LR's of the deceased tenant preferred the present revision application by invoking the provisions of Sec.76 of B.T.& A.L.Act, 1948 (hereinafter referred "the Act"). Parties hereinafter referred in the same sequence and chronology in which they were referred before the ALT Karveer in tenancy file No.754/62 (31/89), as the applicants or the respondents as the case may be. The facts giving rise to the present revision application can be summarized as under.

2. The original applicant Balasaheb Bhosale was the owner of the landed property more particularly described in the application. The father of the present Revision Petitioner i.e. Vishnu Bhau Patil was the tenant in possession of the suit land since prior to the "*Tillers Day*". On 6/8/59 the original applicant has obtained certificate u/s 88C of the Act, so as to entitle him for recovery of possession on the grounds mentioned in that section. In pursuance of the certificate obtained the certificated owner issued legal notice dt.29/9/61 to the tenant and thereby, asked for recovery of possession. Despite of receipt of said notice the tenant has not been duly complied the same. Therefore, circumstances constrained the certificated landlord to seek the possession against excluded tenant.

3. The application presented by the certificated landlord before ALT registered as file No.754/62. Unfortunate event of the present */is* is that since 1962 onwards the */is* has been completed two successive rounds by exhausting the remedy of remand. During the course of second round of remand the proceedings came to be registered as file No.31/89(New) and it has been decided by the concerned ALT and Ld.appellate tribunal. The A LT by order dt.15/2/2000 come to the conclusion that the certificated landlord is entitled for possession on the basis of certificate issued u/s 88C. While deciding Tenancy Appeal arising therefrom, moved by the unsuccessful tenant, dismissed the appeal in toto. All these circumstances constrained the tenant / opponent to present the present revision application on the grounds more particularly stated in the revision application.

4. Heard Ld.Adv.Banawalikar for the applicants and Ld.Adv.S.B.Desai for the Respondents. After perusing the R&P from both the tribunals below and additional documents placed on record pending the revision application, submissions made by respective learned advocates before this Tribunal, following points arise for my determination. I have recorded my findings with reasons thereon as under :-

### **Points**

### **Findings**

1.	Whether the LR's of the certificated landlord have satisfied the requirements of Sec.88C of the Act?	Negative
2.	If not, whether the judgment & order passed by the tribunals below sustain in eye of law ?	Negative

3.	If not, whether the judgment & order under revision calls for interference therein and if yes, up to what extent ?	As per final order
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### **Reasons**

5. **Point No.1 to 3:-** By avoiding the repetition, it will suffice to state that the parties to the */is*, litigating their rights and interest in the immovable properties since 1962 onwards. The claim of the certificated landlord is based upon certificate issued by the Competent Authority dt.6/8/59, which is at page-11 from the lower courts file. It is pertinent to note here that, the certificate u/s 88C was obtained by the certificated landlord by placing his reliance on the Deed of Partition dt.23/6/56. Copy thereof is at page-29 to 32 from the lower courts record. At the outset of the discussion while examining the correctness of certificate obtained by the certificated landlord, I am of the view that while placing the reliance on the certificate obtained, the certificated landlord was under obligation to prove the existence, execution and truthfulness of partition so effected on 6/5/59, whereby, other properties owned by Balasaheb were allotted to share of Sulochna, who came on record during the pendency of revision as the LR of the certificated landlord. It is pertinent to note here that, the alleged partition-deed has not been placed on record in original. Even the document produced before the tribunal is also not a true copy, or not duly attested by the authority who can certify the true copy. The person who has attested he has not disclosed his capacity, power to do so. In short, existence of Partition-Deed dt.6/5/59 is not duly proved. Not only that, but, even though the existence of the documents is admitted, truthfulness of the contents therein ought to have been proved by examining one of the party to the document. But, neither the applicant Balasaheb himself nor so called attesting witnesses who have signed the document in Modi Script ( 'ÖÖêüß Åŕíúß™ü) have been examined before the ALT. In short, truthfulness of said alleged Partition-Deed is also not proved.

6. In continuation of above observation, it is pertinent to note here that, neither the certificated landlord nor the present LRs of deceased certificated landlord have disputed the facts, that at the time of obtaining certificate, they were holding land described in Deed dt.6/5/59, which is near about 20 acre or more. This factual aspect comes into play for the consideration of the tribunal when the LRs of certificated landlord have continued the */is* on the basis of certificate issued in the name of original landlord. In that context, it was necessary for the LRs of the certificated landlord to enter in the witness box and to disclose about the details of the property which were allotted to present Respondent No.1 to 4, those who have substituted in place of the certificated landlord as his only LRs. The advocate for the tenant / opponent rightly submitted that, if the */is* was continued during the lifetime of certificated landlord and it has been continued by the LRs of the deceased landlord, the LRs are under obligation to enter in the witness box and to prove the requirements of Sec.88C. What are the requirement of Sec.88C. It is obligatory for the LRs to enter in the witness box and make themselves available for the purpose of cross-examination. Not only that, but, they have to prove their

economical condition and holding is still as it is and there is no substantial change therein either in the property owned or income therefrom. In addition thereto the LR's of the deceased certificated landlord are also bound to prove the bonafide requirement of the disputed land for their personal cultivation independently. Advocate for the opponent / tenant rightly called my attention on the following two precedents.

- (i) Hariba Barbole Vs. Motibai Deepchand, *reported in* 1974 Mh.L.J.823-D.B.
- (ii) Maruti Gade Vs. Dattatraya Maval, *reported in* 1977 Mh.L.J.-848

The preposition of law laid down in these two precedents can be summarized as under :

*"Though the right to continue with the litigation through the LR's based on certificate obtained u/s 88C is inheritable, legal representatives have to prove their personal qualification as to bonafides and holding by reference to date on which they are brought on record. Making of an application alone is not enough to enable the landlord to get possession of the land. Besides proof of the bonafide requirement the right of landlord is subject to the conditions laid down in sub-sec.5 of 33B. If the landlord dies during the pendency of the proceedings and LR's are brought on record they get the right of further prosecution. The intention of the Legislature would be frustrated if one has taken the view that the court has to consider the requirement of the original landlord on the date of application. Therefore, holding and income of the heir has to be considered for the purpose of equalization of holding u/s 33B(5) of the Act."*

7. I have gone through the above precedent very carefully and do find that the preposition of law laid down in these precedents guides me to examine the evidence and documents placed on record by keeping in mind the preposition of law laid down therein.

8. While doing so at first, I may state here that fact of alleged partition dt.6/5/59 is not duly proved. Secondly, the original certificated landlord during his lifetime though prosecuting the matter has not entered in the witness box and made himself available for the purpose of cross-examination. The entire proceedings have been conducted through POA on behalf of the certificated landlord and the POA himself has entered in the witness box, whose statement is at page-33 at lower courts file. One Babasaheb Desai has made himself available on behalf of certificated landlord. On this touchstone, the advocate for the opponent / tenant rightly called my attention towards the precedent laid down by our Hon.High Court in the case of *Gangabisan Joshi Vs. Dattatraya Bhilade, reported in 1984 Bom.R.C.32.*

9. No doubt, above precedent is based on the provisions of Bombay Rent Act. However, before referring the preposition of law laid down in the above precedent, I would like to make it clear that the standard of proof in respect of bonafide

requirement of the property for once use is ever based on same footing so far as the Tenancy Act and Rent Control Act is concerned. Therefore, the preposition of Law laid down in the above precedent if quoted here that will certainly help me to judge the material placed before me in proper spirit, which runs as under :-

*"Bonafide requirement must be deposed by the person who is requiring the premises u/s 13(1)(g) namely the landlord. If the landlord does not step into the witness box to bring before the Court legal evidence for proving his requirement, then it cannot be said that the reasonably and bonafide requires the premises as mentioned in sec.13(1)(g). The landlord can delegate the authority to conduct a case but he cannot delegate the duty to depose, particularly in respect of facts which are based on personal cultivation."*

10. I have gone through the above precedent very carefully and do find that the preposition of law laid down therein guides me to hold that herein this case, the case of bonafide requirement is based on the Special Statute i.e. Tenancy Act, the provisions are quite identical and the object of Legislation, is also the same i.e. to protect the meagre economical sector and to be have a beneficial Legislation, in the interest of tenants in possession.

11. While considering the requirement of examination by the party concerned in a civil litigation, our Hon.Supreme Court has ruled that if the party failed to make himself available for the purpose of cross-examination the case pleaded by him may not be correct. In support of above observation, advocate for the opponent / tenant rightly called my attention towards the precedent by our Hon.Supreme Court in the case of *Vidhyadhar Vs. Manikrao*, reported in 1999 SC 1441(1), wherein Their Lordships have ruled as under :

*"Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the otherside, a presumption would arise that the case stated by him is not correct."*

12. Admittedly, herein this case, though the applicant / certificated landlord and after his death his LRs have prosecute the *lis* by clockwise or anticlockwise by exhausting the remedy of remand twice, they have not made available themselves for the cross-examination. No legal evidence has been placed on record about the bonafide requirement of the land by landlord for their personal cultivation, so as to evict the tenants in possession who has got otherwise right of statutory purchase in his favour.

13. At this juncture, advocate for the Respondent / owner strongly submitted that at the time of second remand the MRT has directed to record the findings of particular issues and it was not re-opened as a whole. I do not find strong substance in these submissions. While passing the order of remand the Tribunal has make it clear that the judgment & orders passed by earlier tribunal stands set aside. The matter was not referred for re-hearing by keeping the revision

application on record, but the entire order was set aside. Therefore, the scope of enquiry contemplated ought to have been complied with by the tribunals below by keeping in mind change circumstances i.e. substitution of LR in place of certified landlord and proof required to substantiate the claim by LR. Neither applicants were restrained to lead substantive legal evidence on the points of their bonafide requirement nor the tribunal was restrained from recording findings of such legal issue while deciding the matter after remand. Once the matter is remanded with liberty for re-trial, it cannot be restricted for any purpose, but left with the Court dealing with the matter on its own merit. On this touchstone also the advocate for the respondent could not satisfy this Tribunal as to why the enquiry about the bonafide requirement on the part of landlord have not been specifically established by the applicants themselves while prosecuting the matter based on certificate issue in the name of deceased landlord. In short, after perusing the entire record placed before me, I do find that after the death of certificated landlord his LR has utterly failed to bring on record legal evidence of bonafide requirements. Therefore, the findings recorded by tribunals below i.e. ALT which has been confirmed by SDO does not sustain in eye of law as same are based without legal evidence on record to substantiate the same. In short, the concurrent findings passed by the tribunals below calls for interference therein through this Tribunal, which are ever based without any legal evidence on record. It is well settled principle of law, that the MRT while deciding the matter u/s 76 of the Act, has got limited scope of interference in the matter, which has been concurrently decided by the tribunals below. However, at the same time, I should not forget that, if the concurrent findings recorded by the tribunals below are not based on legal evidence to that effect deserves to be set aside, for which this Tribunal has got every power to interfere therein.

14. In support of above observations, I may keep reliance on the following precedents.

(i) *Baldevji Vs. State of Gujarat*, reported in AIR 1979 SC, page-1326

(ii) *Shamrao Vs. Shantabai*, reported in 1995 Vol.I, Mhlj-668

(iii) *Laxman Vs. Vishwanath*, reported in 2007(1) ALL MR-36

The preposition of law laid down by Their Lordship can be summarized as under

*"The provisions of revision within the limits of Sec.76 of the Act are ever in form of second appeal as contemplated u/s 100 of CPC. Same principle applies for an application for revision before the revenue tribunal. The Tribunal has jurisdiction to examine the finding of fact if same are based on no evidence or are found to be perverse in eye of law. A decision arrived at without deciding the proper issues of fact is an essence of decision contrary to law."*

15. By keeping in mind the above preposition of law, I do find that the concurrent findings recorded by tribunals below does not sustain in eye of law and therefore, I answer the 'Point No.1 & 2 in negative' and come to the conclusion

that by invoking the revisional powers of this Tribunal both the orders under revision deserves to be set aside and answer 'Point No.3 accordingly'. With these observations, I proceed to pass the following order.

**ORDER**

The revision application is hereby allowed.

The judgment & order passed by Ld.appellate tribunal i.e. SDO Karveer in Tenancy Appeal No.29/2000, dt.13/6/2001 & the judgment & order passed by the ALT Karveer in Tenancy Case No.754/62 (31/89), dt.15/2/2000 is hereby set aside.

The application moved by the landlord for recovery of possession against the tenant stands dismissed.

No order as to costs.

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

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