BEFORE THE DESIGNATED MEMBER, MAHARASHTRA REVENUE TRIBUNAL, BENCH AT PUNE.

Presided over by : V.B.Kulkarni, Designated Member

No.SH/X/4/2015

Shri.Arun Keshav Jadhavar & otrs.,
R/o.Dhotre, Tal.Barshi, Dist.Solapur. .....Applicants

VS.

Shri.Vishwanath Somnath Jadhavar & otrs.,
R/o.Dhotre, Tal.Barshi, Dist.Solapur. .....Respondents

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

Appearance :- Adv. Shri J.P.Dhaytadak for Revision Applicants.
Adv. Shri B.B.Bhargude for Respondents

DATED:- 25th FEBRUARY, 2021

JUDGMENT

Being aggrieved by the judgment & order by the Sub-Divisional Officer, Solapur No.1 (hereinafter referred as the "SDO") in Tenancy Appeal No.7/2014, dt.21/7/2015, u/s 84(c) of the Act, as the tribunal of first instance, the aggrieved tenant has preferred the present revision application by invoking the provisions of Sec.76 of B.T.& A.L.Act, 1948 (hereinafter referred "the Act"). Facts either admitted or otherwise duly proved can be summarized as under.

2. One Shri.Hariba Bhau Jadhavar, was the original owner of the disputed land. He has executed registered lease-deed for 13 years in favour of Shri.Rangnath Parsu Jadhavar on 25/1/1956. On 19/2/1957 Rangnath Jadhavar has issued a legal notice to Hariba, so as to accept the mortgage money and to handover the possession of the disputed land to him on the ground of bonafide requirement. In pursuance of said notice the proceedings were conducted before Mamlatdar and proceedings u/s 29(2) of the Act, came to be dismissed by judgment & order dt.10/11/1957. As the aggrieved party has not challenged the said order, same has been reached to its finality. Thereafter the proceedings u/s 32G of the Act, came to be initiated in respect of the disputed land through file No.28/67. After conducting due enquiry as contemplated, then Mamlatdar has fixed the price of the land to the tune of Rs.3,674-67 ps. The order of fixation of price was ever under challenge by the aggrieved party and lastly revision against the said order which was preferred by the landlord before this Tribunal bearing No.2/1991, came to be disposed of being withdrawn unconditionally by order dt.20/7/2016 and as such the order u/s 32G of the Act, in respect of the fixation of price dt.21/9/1967 reached to its finality in favour of the tenant. Not only that, but, the tenant / petitioner has not disputed the fact that as the *lis* was going on against the order of fixation of price, the entire amount fixed has not yet paid and some instalments are remained unpaid. Therefore, certificate u/s 32M of the Act, has not yet issued in favour of the tenant.

3. With these short undisputed facts, while presenting application for restoration of possession u/s 84(c) of the Act, respondent / original applicant has moved proceedings before the SDO, Solapur contending that the tenant has committed breach of several conditions and thereby, his possession over the disputed land has become unauthorized or wrongful as per Section-84(c) of

the Act, and therefore, the possession of the disputed land be restored with the landlord. The grounds of contravention committed by the tenant pleaded specifically in Para-1&2 of the application are as under.

(i) As per the fixation of price in file No.28/67 by order dt.21/9/1967, the amount of price fixed ought to have been paid in 4 instalments. However, the tenant has not paid the instalments fixed on the specified dates as given in the order and even till today he has not paid the entire amount of consideration and thereby, contravened the order passed in his favour u/s 32G of the Act.

Secondly, he has specifically pleaded that, without having certificate u/s 32M of the Act, in favour of the tenant he has transferred the disputed land in favour of respondent No.2 to 6 through registered deed dt.19/4/2001, and that is without permission of the authority constituted under the Act, and thereby, committed the breach u/s 43 of the Act, and as such the said transfer has become invalid and since then even the possession of the tenant over the disputed land has become unauthorized or wrongful within the meaning of Sec.84(c) of the Act.

4. On these two grounds the respondent / original applicant has claimed the restoration of possession in his favour.

5. The preset revision petitioner / original respondent has contested original proceedings before SDO by filing detail say dt.26/11/2014 and specifically pleaded that he has not committed any breach of condition embodied in the Act, and he is in lawful possession of the disputed land since beginning till this date.

6. After considering the pleadings put forth and documents produced without holding enquiry as contemplated under the provisions of Mamlatdar's Courts Act, 1906, SDO as the court of first instance decided the proceedings on merit, and allowed the application moved by the landlord for the restoration of possession of the disputed land in favour of the landlord holding both the acts committed by the tenant as proved, and thereby, his possession become unauthorized over the disputed land. Being aggrieved by the said order passed by SDO as the court of first instance, the tenant has preferred the present revision application.

7. After the receipt of record & proceedings from both the tribunals below including the proceedings of file No.32G/Dhotre/28/67, I have heard Ld.Adv.Shri.J.P.Dhaytadak for the revision petitioner and Ld.Adv.Shri.B.B.Bhargude for the respondents. After considering oral as well as written arguments submitted by the respective advocates and after perusing the entire pleadings and evidence placed on record before this Tribunal, following points arise for my determination. I have recorded my findings with reasons thereon as under :-

	Points	**Findings**
1.	Whether it is proved that the statutory sale u/s 32G of the Act, in favour of the tenant has become ineffective due to the acts of default committed by the tenant?	Negative
2.	Whether the original applicant / present respondent is entitled for the restoration of possession u/s 84C of the Act, as the possession of the present petitioner has become unauthorized or wrongful within the meaning of Sec.84(c) of the Act?	Negative
3.	Whether the judgment & order passed by the SDO is proper, correct and legal one? If not, Whether he has committed jurisdictional error while passing the same?	Judgment being without jurisdiction suffers from jurisdictional error
4.	What order in respect of the restitution and costs?	As per final order

Reasons

8. Point No.1 to 3: During the course of arguments Ld.advocate for the respondent / landlord strongly submitted that the registered sale-deed dt.25/1/1956 on which basis the tenant has came in to possession is in form of mortgage, and not lease-deed atleast within the ambit of provisions of Tenancy Act. I do not find strong substance in these submissions for the first time before this Tribunal. Admittedly, these contentions are not ever raised while contesting the proceedings before the SDO or even the respondent / landlord has not entered in the witness box before SDO while contesting the proceedings u/s 84(c) of the Act. Therefore, oral submissions before this Tribunal are not sufficient so as to made out the embargos laid down in Section-91 & 92 of Evidence Act, so as to allow the party the lead evidence contrary to the recitals of the terms of documents. Therefore, the submissions to that effect made has become meaningless. Not only that, but, plain reading of original lease-deed dt.25/1/1956 which is at Page-69 speaks volume about the terms of documents in form of lease, fixing the annual rent of Rs.300/- for the period of 13 years. Furthermore, notice dt.19/2/1957 issued by the landlord to the lessee which is at Page-107 of the trial courts' file and proceedings initiated on the basis of said suit notice, which came to be decided by judgment & order passed by the tribunal on 10/11/1957, which is at Page-45 speaks volume about the relationship between the parties and proof thereof as landlord and tenant and nothing more. Furthermore, the revenue entries in the column of cultivation from 1957-58 to 1962-63 7/12 extract thereof is at Page-9, speaks volume that since from the date of execution of lease-deed dt.25/1/1956 the lessee came in possession as the tenant and nothing more.

9. Not only that, but the order passed below EXH-I in RCS No.14/70, dt.6/1/2018 speaks volume that the landlord has withdrawn the suit for redemption unconditionally in terms of the contents therein. Therefore, fact remained unanswered, as to whether his act of obtaining possession is legal or not?, which shall be discussed in the later part of the judgment, but, it becomes crystal clear that the nature of document as the lease-deed, as observed supra has reached to its finality.

10. Secondly, the Ld.Adv.Shri.B.B.Bhargude for the respondent / landlord, strongly submitted that the tenant has not deposited the price fixed as per Section-32G of the Act, while passing the judgment & order u/s 32G of the Act, dt.21/9/1967. As per his submissions the price fixed ought to have been paid in four instalments and last instalment was due and payable on or before 1/4/1971. However, except 1st instalment remaining 3 instalments are not yet paid and prayer made by the tenant to accept unpaid amount has been rejected by the tribunal, of which copy is on record produced at the stage of hearing of this revision. Fact has become evident that the tenant has not paid entire amount fixed and 3 instalments remained unpaid till this date. However, Whether non-payment of price would amount a breach of condition? Or, Whether it would make the possession of the tenant wrongful or unauthorized?, is the issue before me. While deciding this aspect I should have to keep in mind the provisions of Section-32K of the Act, which deals with the mode of recovery of price fixed and steps which ought to have been taken by Mamlatdar for recovery of unpaid price as the arrears of land revenue. Failure to take such corrosive steps would not make statutory sale ineffective, unless and until such corrosive steps failed invain. Unfortunately or fortunately, herein this case the tribunal has not taken any steps to recover unpaid price by adopting the mode of corrosive steps. On the contrary, this will not be out of way to state here that the order of fixation of price passed on 21/9/1967 was ever subjudice before MRT in revision No.2/91, which came to be withdrawn unconditionally by order dt.20/7/2016. In my opinion, during the pendency of revision application No.2/91, there was no reason even for the tribunal to take corrosive steps for the recovery of unpaid price or even the tenant cannot be held liable for the non-payment of all instalments, particularly when the order of fixation of price was ever subjudice either before the Ld.appellate tribunal or before the Revisional Tribunal. Therefore, question does not survive, so as to upheld the possession of the tenant over the disputed land as unauthorized or wrongful in contravention of Section-32K of the Act. Even otherwise, what shall be the effect of non-payment of price and failure by the tribunal to take effective corrosive steps as contemplated u/s 32K of the Act, has been considered by Hon.High Court, in the case of **Nathu Buwa Vs. Sakhubai Mahar, 2005 ALL MR(4)-329.** The proposition of law laid down therein can be summarized as under-

> "Considering the mandate of Sec.32(M)(2) and the use of the phrase "until the tribunal fails to recover the purchase price", the tribunal has to act and to take all effective steps to act and recover the purchase price. On conjoint reading of Sec.32(K)(3), 32(M)(2) it has to be accepted, that there is no failure on the part of the tribunal to recover the price."

11. I have gone through the above precedent very carefully and do find that, unless and until corrosive steps are followed by the tribunal for the recovery of unpaid price, there shall not be any legal effect against the statutory ownership granted in favour of the tenant u/s 32G of the Act. In short, non-payment of price or failure to pay entire price as per Schedule would not invalidate the statutory sale, which has been conferred in favour of the tenant. As a courtesy observations, it will not be out of way to state here that even otherwise there was no cause of action for the landlord to move the application u/s 84(c) of the Act, on this ground on 31/5/2014, particularly when the revision against the fixation of price i.e. 2/91 was pending before this Tribunal till 20/7/2016.

12. Second ground more specifically pleaded in the application before SDO is, that the transfer effected by the tenant through registered sale-deed dt.19/4/2001 in favour of respondent No.2 to 6. No doubt, the said disputed transfer though brought into existence i.e. without paying full price fixed and certificate u/s 32M of the Act, in favour of the tenant and without permission granted and in contravention of Sec.43 of the Act. However, who shall deal with this issue and in what manner?, so also, Whether such breach of condition would come within the ambit of Sec.84(c) of the Act?, is the main issue involved in the matter. On this point, I may rely upon the provisions of Section-84C(1) of the Act. The plain reading of this provision speaks volume to the effect that any transfer effected in contravention of Sec.43 of the Act, is required to be dealt with by Mamlatdar as the court of first instance, and not by SDO, as the court of first instance within the ambit of Sec.84(c) of the Act. No one should confuse with the provisions of Sec.84(c) of the Act on one hand and Sec.84C on another hand. These two provisions are quite distinct and shall have to be used at the different cause of action before separate Competent Authority, and such order shall have to be reached to its finality before invoking the powers of restoration. Herein this case, admittedly the landlord has not filed any application as contemplated u/s 84C of the Act, challenging the validity of transfer effected in favour of the respondent No.2 to 6, as a part of enquiry contemplated u/s 84C of the Act. Even Mamlatdar has not passed such statutory order till today. Therefore, such allegations cannot be put forth before SDO as the court of first instance within the ambit of Sec.84(c) of the Act. On this ground taking the cognizance of breach of Sec.43 r/w 84C of the Act, is beyond jurisdiction of SDO as per Sec.84(c) of the Act. Therefore, if any proceedings has been conducted or order came to be passed by ignoring the difference between these two Sections by SDO, that would amount jurisdictional error committed by him which should invalidate the entire proceedings.

13. Not only that, but, even otherwise if the sale has been declared ineffective either on the grounds mentioned u/s 32M or u/s 43 of the Act, the proceedings u/s 32P of the Act, supposed to be initiated before Mamlatdar, and not under the provisions of 84(c) of the Act, before Collector directly. In the event of declaring the sale ineffective under any of the provisions quoted in Section-32P of the Act, the proceedings are required to be presented before Mamlatdar and not before the Collector. On this count also petition for restoration of possession u/s 84(c) of the Act, before SDO is not maintainable and without jurisdiction.

14. In short, neither on the ground of non-payment of entire price fixed nor on the ground of subsequent transfer effected in contravention of Sec.43 of the Act, would amount breach of condition so as to treat the possession of the tenant over the disputed land either unauthorized or wrongful as contemplated u/s 84(c) of the Act. Therefore, the order passed by the SDO within the ambit of the said Section is not only illegal, but, same is without jurisdiction, so as to entertain the proceedings within the summary manner. Suffice to say that the judgment & order passed by SDO within his original jurisdiction by invoking the powers u/s 84(c) of the Act, being without jurisdiction deserves to be set aside. Accordingly, I answer the 'Point No.1&2 in negative, & Point No.3 as per final order.'

15. Point No.4: Pending the revision initially this Tribunal was pleased to pass the interim order in form of 'parties are directed to maintain status-quo'. However, record itself speaks that the

order under revision came to be executed through Mamlatdar and the landlord has succeeded in obtaining possession in pursuance of the order which is under revision. All these events took place pending the revision on 13/6/2016. By taking the effect of execution of order under revision, the Ld.advocate for the revision petitioner carried out the necessary amendment in the revision application and prayed for remedy in form of restitution of possession. While considering this aspect, at first I shall have to be make it clear that the Law is well settled on the point that, when the provisions of Mamlatdar's Courts Act, 1906, are silent or not sufficient to explain the Law, the provisions of CPC shall apply for the trial and execution of the orders passed by this Tribunal. Identical provision is also made under the Rules framed for the functioning of the Tribunal. The relevant Rule framed under the provisions of Code runs as under.

Rule-68. Tribunal to follow provisions of Civil Procedure Code in matters not provided for in these regulations.- The Tribunal shall, in any matter not provided for in these regulations, follow the procedure, as far it is applicable, as laid down in the Code of Civil Procedure, 1908.

16. By keeping in mind the provisions quoted supra, it has become evident that here in this case, I should have to consider the scope and applicability of Sec.144 of CPC while granting the relief of restitution, particularly when the order of revision has been set aside on the ground of judicial error committed by the tribunal below. At first it will not be out of way to state here that the Ld.advocate for the revision petitioner Shri.Dhaytadak time and again tried to submit before this Tribunal that the execution of order being carried on pending the revision, this Tribunal is well empowered to direct the restitution directly. In support of his submissions he has kept reliance on following two precedents.

(i) Kandan / K.Periaswamy, AIR 2004 Madras-425

(ii) Binayak Swain / Ramesh Chandra Panigrahi, AIR 1966-SC-948

17. I have gone through both the precedents very carefully. However, with utmost humbleness I may state here that both the precedents relied by the Ld.Adv.Shri.J.P.Dhaytadak are not on the point which was crucial for this Tribunal while considering the prayer for restitution. In both the precedents the Hon.Supreme Court or the Hon.High Court, Madras were not dealing with the issue of the phrase 'the court of first instance' used in Section-144 of CPC and the effect of amendment of 1976 to that effect. Therefore, with due respect I may state here that the proposition of Law laid down therein is not strictly applicable to the case at hand. On the contrary, I may keep reliance on following two precedents, while considering the scope and the meaning of the phrase "the court of first instance" used in Section-144 of CPC.

(i) State Bank of Saurashtra / Chitranjan Raja, AIR 1980-SC-1528

(ii) Neelathu Parakummi / Mantharapalla, AIR 1994-SC-1591

> "The principle of restitution under this Section is based on Latin maxim **"Actus curiae neminem gravadit"** means the act of Court must harm no one. After amendment of 1976 in the Code and substitution of the expression **"The Court which passed the decree or order"** as per Clause-A of the explanation means the Court of first instance. The expression the Court which passed decree or order has been deemed to include the Court of first instance only.
>
> Transferee Executing Court is not the Court passing the decree or order. The Court which is competent to entertain the application for restitution is the Court of first instance should decreed the suit and not Transferee Executing Court."

18. I have gone through the above precedents very carefully and do find that, the proposition of Law laid down therein by our Hon'ble Apex Court, guides me to hold that herein this case, even though the respondent has succeeded in executing the order under revision though having knowledge of the pendency of the revision against it, prima-facie, it appears illegality or a wrongful act on the part of the party as well as the tribunal executing the order. It is well settled principle of law, that once the matter is pending before this higher court, and its notice has been

taken by the parties, and the inferior authority, they shall be very slow while executing the orders, which are under challenge before the Higher Court. This principle of Law is based on sound proposition, that the parties should not cause harm due to the pendency of the proceedings or they should not ignore the effect of pendency, which may cause multiplicity of litigation and wrongful gain to the defeating party at the end of the *lis* . Any how, herein this case also prayer of the revision petitioner for the restitution cannot be granted directly by this Tribunal. In short, herein this case also, though the Court of SDO being the court of first instance who has passed the order without jurisdiction, which came to be set aside by this Tribunal, shall entertain restitution. In those events the said authority is the only authority who can pass the order of restitution, so as to correct its own wrong within the ambit of Section-144 of the Code.

19. Now, in continuation of observations made supra, it has become evident that the respondent / landlord has succeeded in executing the order under revision though having the notice of pendency of revision. Not only that, but, the executing authority has also ignored the pendency of revision against the impugned order, which was likely to be executed by them. Under these circumstances, wrongful dis-possession of the tenant pending the revision entitles him to claim, compensation or special costs as he has lost the possession pending the *lis,* and lastly succeeded before this Tribunal on the ground of jurisdictional error committed by the tribunal below. In my view, if the amount of costs is quantified to the tune of Rs.25,000/- by taking the note of Rule-36 made for the functioning of this Tribunal, that will meet the ends of justice.

20. In addition thereto, inview of Rule-68 framed in MRT Regulation, 2013, wherever the provisions of Mamlatdar's Courts Act, 1906 are silent or incomplete in that case Tribunal shall have a power to follow the procedure as applicable in CPC. Therefore, by considering the ambit of Rule-68 I do find that the provisions of CPC are applicable to the present case, particularly in respect of granting of enquiry in respect of the future mesne-profit from the date of illegal dis-possession of the tenant till the actual date of delivery of possession, for which speaking order shall follow in the operative part of the judgment. With these observations, I answer the 'Point No.4 in affirmative' and proceed to pass the following order.

ORDER

The revision application is hereby allowed with costs.

The judgment & order passed by SDO Solapur No.1 is hereby set aside.

The petitioner is at liberty to move the proceedings u/s 144 of CPC of restitution before SDO, whose order has been set aside by this Tribunal.

The SDO is hereby directed to pass suitable order in respect of the restitution and put the revision petitioner in possession of the suit property at the earliest.

Further it is ordered that the petitioner is at liberty to file separate application u/o 20 Rule-12(1)(c) of CPC for the enquiry of future mesne-profit from the date of dis-possession till the actual date of delivery of possession to him before SDO Solapur, whose order has been set aside by this Tribunal and who has passed the impugned order as the court of first instance.

The respondent is hereby directed to pay the costs of Rs.25,000/- to the petitioner within one month from today. Failure to which, the petitioner is at liberty to recover the same alongwith future simple interest @7% p.a. from the date of order till its realization as the arrears of land revenue.