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

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

No.TNC/REV/138/2005/NS

The Kisanveer Satara Sahakari Sakhar Karkhana Ltd.
Bhuinj, Tal.Wai, Dist.Satara,
Through its Managing Director. .....Appellant

VS.

The State of Maharashtra

.....Respondent

Ceiling Appeal U/s 33 of Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961

Appearance :- Adv. Shri D.V.Deshpande for Appellant
AGP Shri.M.H.Oak for Respondent

DATE:- 30th NOVEMBER, 2018

JUDGMENT

Being aggrieved by the judgment & order passed by the Sub-Divisional Officer, Wai / Surplus Lands Determination Tribunal, Wai (hereinafter referred as the "SLDT") in Ceiling Case No.1/97, dt.15/7/2005 the aggrieved holder of the land preferred the present appeal by invoking the provisions of Sec.33 of Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (hereinafter referred "the Act"). Facts either admitted or even not seriously disputed or otherwise proved by record can be summarized as under.

2. Satara Sahakari Sakhar Karkhana P.Ltd., Bhuinj, is a Body constituted under the provisions of Maharashtra State Co-op.Societies Act, running a sugar factory in the name and styled given in the Nomenclature as the non-applicant. The factory is established under the Act, and started its business in the year 1965. Initially the State Government has allotted a portion of 308A 16G for the object of the factory in the year 1968. However, lateron Government has confirmed the order of allotment of the land only to the

extent of 120A 28G in the name of factory and remaining area was taken back by the State Government's order dt.15/10/76. Meantime, the factory has also purchased the portion of 95H 94R through private persons under different sale-deeds by negotiation. As such on the commencement date of the Act, i.e. 2/10/75, holding of the factory was to the tune of 144H 79R. The appellant / factory has not disputed the fact, that though the holding of the factory was in surplus on the commencement date, they have not submitted their Returns u/s 13 of the Act, before SLDT. Therefore, by letter No.ICH/2081/28039/PK/635/L-7, dt.16/2/1996, initially the Government has rejected the claim of exemption set-up by the factory u/s 47 of the Act, and directed to hold enquiry against the holder as per the provisions of Sec.14 of the Act. Accordingly, in the first round of litigation, enquiry was started, through notice u/s 17 in form No.1&2 as per Rule-6, dt.16/10/96. The factory / holder of the land has challenged the said notice before Hon'ble High Court, in Writ Petition No.5547/1996, which came to be disposed of and again fresh enquiry was initiated as per Sec.14 by issuing notice u/s 17 of the Act. In the first round of litigation the holding of the factory was found surplus to the tune of 120H 80R by order dt.2/3/2000. Being aggrieved by the said order the holder of the land i.e. factory has preferred appeal u/s 33 before MRT, bearing No.33/2000. The said appeal came to be decided on merit after hearing both the parties. The then Hon.Member of the Tribunal, came to the conclusion that for the reasons recorded in the observations of the judgment fresh enquiry was necessary in respect of the exemption as regards "pot-kharaba" from the holding of the occupant and accordingly, in the light of the directions given in the judgment matter was remanded back to SLDT. In the second round of litigation the chance of fresh hearing was given to the holder/occupant. After considering the directions given by MRT in the judgment & order passed in appeal No.33/2000 found that the holding of the factory deserves for exemption to the extent of 9H 85R, as the total area which comes under the definition of "pot-kharaba". Accordingly, after deducting the portion of 9H 85R from total holding of the factory, SLDT come to the conclusion that the holding of the factory is surplus to the tune of 113H 9R after deducting the permissible holding in the name of the factory. Being aggrieved by the said judgment & order the aggrieved society / factory has preferred the present appeal on the grounds more particularly set out in the appeal memo.

3. Heard Ld.Adv.Shri.Deshpande for the appellant and Ld.AGP Shri.Oak for the Respondent / State. Perused the R&P received through the tribunal below. In addition thereto, after giving anxious thought to the documents submitted during the enquiry of appeal before this Tribunal following facts become evident.

4. Without disturbing the facts either admitted or otherwise proved as narrated in Para-2 supra, Ld.advocate for the appellant strongly submitted that the tribunal below has failed to follow the strict procedure as

contemplated u/s 30 of the Act, and thereby, denied the right of fair trial within the framework of principles of natural justice. Secondly, the authority below has not calculated the area of "pot-kharaba" which is available for exemption under the Act. Thirdly, the authority below has not given much more attention towards the other permissible Heads, under which the factory has claimed exemption u/s 47 of the Act. On this touchtone the advocate has submitted that, as per Annexures given in the proceedings, area of 1H 56R is permissible for exemption being affected by acquisition under the different Heads through MSEB and the State Government. Secondly, as per the Govt.Notification dt.5/7/1996 the factory is entitled for exemption of 40H lands from the holding under the different Heads, such as use of the land allotted for Mankai Nursary, etc. Thirdly, the tribunal below has failed to consider the right of exemption sought by the factory under the Head of non-agricultural use out of the holding, which comes upto the tune of 28H 45R, which is the area in possession of factory, and under the use of occupation of the factory for several developed plans, as per the several Govt.Notifications and order dt.18/2/1998, given by the then SDO Wai. In addition thereto, when the N.A.permission of the land to the extent of 28H 45R which has been regularized by retrospective effect and penalty against being recovered through the factory, said area is also required to be excluded from the holding of the factory under the ground of lawful exemptions. In short, after considering several Heads, under which the factory is entitled for the exemption u/s 47 of the Act, remaining holding of the factory never remains as surplus within the meaning of the Act. Therefore, neither the factory is under obligation to furnish any Returns nor portion from the holding, which stands in the name of the factory comes under the definition of surplus land. In short, judgment & order passed by the SLDT being contrary to Law deserves to be set aside holding the present appellant as the Society whose holding does not come within the ambit of surplus land.

5. As against this on behalf of State Ld.AGP Shri.Oak submitted his written notes and specifically contended that the enquiry of the holding of the factory has to be considered as on the Commencement date i.e. 2/10/1975. On that date neither factory has obtained NA permission through the competent authority, nor its use for non-agricultural purpose has been duly proved. In addition thereto, mere imposing penalty while regularizing NA proceedings that will not amounts to consider the said holding within the ambit of exemption u/s 47 of the Act. In addition thereto, Ld.AGP strongly submitted that, while setting aside the order of SDO in first round of appeal, the then MRT Member, has considered all aspects involved in the matter and remanded the matter for limited enquiry and i.e. only to the extent of area, which comes under the definition of "pot-kharaba" out of the total holding and to give its proper effect under the exemption from the holding except otherwise all other grounds which were agitated in the present appeal were also raised before the then Member of MRT, but, same objections reached to

its finality. In the first round of litigation all these objections have been already rejected and remand was made only for certain directions and not for re-trial as contemplated in form of fresh trial. Under these circumstances, findings recorded by tribunal below are based on sound reasonings and sufficient enquiry conducted as against the appellant. In short, by taking undue advantage of procedural Laws, the factory is avoiding to handover the surplus holding to the State and to make it available for distribution to the poor and needy agriculturists. Therefore, appeal being devoid with merits deserves to be dismissed.

6. After considering thorough submissions made by both the Ld.advocates representing the parties and record placed before this Tribunal, following points arise for my determination. I have recorded my findings with reasons thereon as under :-

	Points	**Findings**
1.	Whether the judgment & order passed by the tribunal below / SLDT Wai, is proper, legal and correct within the ambit of Sec.30 of the Act?	Affirmative
2.	Whether it calls for interference therein? and if Yes, up to what extent?	As per final order

Reasons

7. Point No.1&2 : In view of the undisputed facts narrated in Para-1 supra by avoiding repetition, I would like to make it clear that before initiating the proceedings of ceiling case No.1/97 the present appellant / society has exhausted the remedy of exemption u/s 47(1)(b) of the Act, before the Government. That matter reached upto Hon'ble High Court, through Writ Petition No.5547/1996. During the course of hearing of said Writ Petition, after considering the submissions made before the Hon'ble High Court, and reply submitted by the State, directions were given to SLDT, to follow the procedure as per the provisions of the Act, and thereby, earlier action taken by the authority was set aside. In pursuance thereof, the SLDT has issued fresh notice dt.30/10/99 in Form No.5 as per Rule-5(2) made under the Act, with effective service in person or even by publication. In pursuance the said notice being effectively served, the factory has submitted its written statement signed by the advocate on behalf of the factory and authorized person to represent the factory. The said reply is of 6/12/99, which is at Page-409 from the file of SLDT. Before considering the Law points involved in the matter and submissions made by respective Ld.advocates, at first I may

state here that the proceedings contemplated u/s 30 of the Act, before the tribunal has to be conducted as per the procedure laid down in Sec.30 and appeal before this Tribunal has to be conducted as per the provisions of Sec.33 of the Act. Plain reading of Sec.30 of the Act, speaks volume about the manner and the procedure in which the enquiry has to be conducted. In simple words, it may be stated that the authority constituted under the Act, has the powers under the CPC to try the proceedings in form of suit in following manner:-

(i) Facts to be proved by affidavit or disproved by counter affidavit;

(ii) by summoning and enforcing the attendance of any person and examining him on oath; and

(iii) compelling the production of documents.

8. It is pertinent to note here that, the Legislatures in their wisdom have used the word "suit" while entertaining the pleadings before the Tribunal. In my humble opinion the word "suit" is not defined in the Code, but, the "suit" as a proceedings in form of "suit", shall have to be instituted by presenting the Plaint. Herein this case, the notice issued u/s 5(2) referred supra, is nothing but a proceedings presented in the proper form prescribed under the Rule, wherein, the State is treated as the Plaintiff and the person or the authority against whom the enquiry is conducted shall have to be treated as Defendant. Similarly, in the Code the word "plaint" and "written statement" though not defined independently, the rule of pleadings Order-6 Rule-1 defines that the word "pleading" means "plaint and written statement". By giving all these references, I may state here that the reply submitted by the factory ought to have been in form of pleadings verified as per rule of pleadings. Unfortunately, the say submitted by the factory at Page-409 is not duly verified. The verification is important in the present case, particularly when the factory has not disputed the fact, that they have not submitted the Return u/s 12 till this date. In short, there is no verified statement on behalf of the opponent / Defendant to support the truthfulness of their averments made in the say.

9. Secondly, it is pertinent to note here that, in the present proceedings in the first round of litigation though the matter was reached up to this Tribunal, it has ended in the order of remand. However, despite of exhausting first round of litigation in pursuance of notice u/s 5 and second round after the remand, the Defendant / factory has not entered in the witness box, so as to comply the provisions of Sec.30(a)&(b) of the Act. In short, even after perusing the entire Roznama of the proceedings even after the order of remand, in the first round of litigation and during the course of second round of litigation while passing the impugned order by the tribunal below, the opponent / Defendant / factory has not lead any evidence in form of affidavit or even not given a chance to the State / applicants to defend their

averments in form of counter affidavits as contemplated u/s 30(b) of the Act. In short, the averments and submissions made on behalf of the factory are without pleadings and evidence on oath.

10. Thirdly, admittedly though having excess holding of the land on the commencement date the factory has not submitted Return as per Sec.12 of the Act. On this aspect at first I may state here that the Legislatures in their wisdom have prescribed the Form No.5(1)(b) as a form for submitting the Return when the holder is under liability to submit the Returns. Herein this case, the factory has not disputed that their holding was excess as on the commencement date. Therefore, the factory was ever under obligation to submit the Returns in Form No.12. Failure to submit the Return at the initial stage constrained the SLDT to initiate the proceedings by invoking provisions of Law. In pursuance of the same notice has been published. In my view, the effect of that notice was, that to submit the Return and to make available in form of explanation about the details of holding and entitlement of exemption under different Heads as laid down in Col.No.12 to 19 of the form. Column No.12 of the prescribed form call upon the details of excluded holding and reasons therefor. In these circumstances, I may state here that Law has made it mandatory to give verification about the truthfulness of the Return accompanied with such statement. The form prescribed in Marathi about the verification if quoted here that will suffice the purpose of above observations.

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11. In short, the form prescribed also makes it mandatory to submit the Return with verification. The effect of such verification is that a filing a false Return or given a false information in the Return is not only penalized under the Sec.12, but, also under as per Sec.40A of the Act.

12. At this juncture Ld.Adv.Shri.Deshpande for the appellant strongly submitted that once the proceeding has been initiated u/s 13 by SLDT, there is no requirement to call upon the Returns through factory / appellant. Unfortunately, in support of his submissions Ld.advocate for the appellant has

not brought to my notice any such statutory provisions in the Act. On the contrary, it is pertinent to note here that, even after in first round of litigation by succeeding in obtaining the order of remand on the ground of failure to give proper chance to made out the case, the appellant has failed to comply either the provisions of Sec.30 or Sec.12 of the Act. In these contingencies, particularly when the matter was remanded it was not necessary for SLDT to call upon the appellants to submit their Returns if any, but, appellant has to make out all these facts by submitting the Returns inspite of filing written arguments on record. On the contrary, if the surplus holder failed to submit the Return even during the course of enquiry u/s 13 SLDT cannot determine the holding by calculating the same on its own motion and that too by considering the exemption under different Heads. Herein this case, the appellant has exhausted remedy of fair trial twice, but, ignored the importance of submission of Return in time. In short, failure to submit the Return makes it easy for me to hold that the factory has refused to submit the Return and consequences thereof shall follow. In support of above observations I may keep reliance on the following precedent.

Nagorao Shrirame / State of Maharashtra, 2002 MhLJ(3)-524

The proposition of law laid down in the above precedent can be summarized as under-

> *"When a person who is required to file the Return u/s 12, but, failed to do so, the Collector can **require** him to submit true and correct Return. Thus, when a Return has not filed the Collector is empowered to give directions to file the Return u/s 13(2). The Commissioner while revising the order of the Collector can give directions to file the Return and not himself determine the holding."*

13. Herein this case, as many as three round of litigation has been exhausted by the appellant and thereby, avoided the responsibility to submit the Return under wrong pretest of Law, for which I do not find it necessary again to call upon the appellant to submit the Return as required u/s 13(2) of the Act. In short, by following the Law laid down in the above precedent I come to the conclusion that it was mandatory for the present appellant to submit the Return atleast when the remand enquiry was conducted as a full compliance / fair enquiry.

14. In the given set of facts and circumstances, it has become evident that the total holding and extent of excess holding on the commencement date in the given case is not at all in dispute. The entire claim of the appellant / factory is based upon exemption from the ceiling limit on different grounds. Therefore, once the fact of excess holding on the commencement date is admitted, burden shifts upon the factory to establish the ground of exemption and upto what extent the exemption is available to them. To establish the same beyond reasonable doubt, and that too by sufficient documentary

evidence, the appellant has to lead evidence, but, failed to do so. Not only that, but, documentary evidence to that effect relied upon must be in form of public documents or a documents which have been duly proved.

15. Now, while considering the submissions made by Ld.Adv.Shri.Deshpande for the factory, at the outset of the discussion I would like to mention here that, the advocate has strongly objected the order passed by the tribunal below on the ground of failure to grant the exemption sought under different Heads. Main ground of exemption sought is that of NA use of the land hold by the factory as on the commencement date i.e. 2/10/75. As per the submissions made in the written say and written arguments before this Tribunal, the appellant / factory has not disputed the fact that the order of NA has been passed by the authority constituted under the MLRC in file No.LNA/SR/81/79 by order dt.26/11/79, and whereby, the authority has imposed penalty for the non-use of the land without permission from 1968-69 to 1978-79. Not only that, but, in pursuance thereof the factory has deposited the NA charges and penalty imposed against it and as such as the order has been passed by the authority with retrospective effect, the order of 48H 85R in respect of the NA has been accorded by retrospective effect, same is deserves to be exempted from the holding of the factory. I do not find strong substance in these submissions simply because admittedly on the commencement date the total holding of the factory was 365A corresponding to 144H 79R. The so called order of NA has been passed by the authority under the Code on 26/11/79 i.e. so far later after 2/10/75. Therefore, I am of the view that the mere passing the order of NA and imposing penalty against the non-use of the land without permission and that too by retrospective effect will not make the factory entitled to exclude the said area of 48H 85R from the total holding of the factory. There is no documentary evidence as to when and in which area the NA use was stand prior to 2/10/75. In my opinion, the holding on the commencement date and its use is of vital importance. Merely because NA permission has been granted subsequent to the commencement date, that will not make the entitlement in the factory to claim exemption of that holding. In short, the authority passing the NA orders are not supposed to supersede the statutory provisions of independent Act, under which the enquiry u/s 30 of the Act, is contemplated. NA order passed by the Tahsildar with retrospective effect will not legalized the excess holding of the factory as on the commencement date, so as to entitle them for the exemption under the Act. In short, as submitted by the Ld.advocate for the appellant, the portion of 48H 85R against which NA order has been passed with retrospective effect is not deserves for exemption from its exclusion from the total holding of the factory.

16. Secondly, the advocate for the appellant called my attention towards the Government G.R.No.ÃÖÃÖÖúÖ/1795/pk/6925, dt.5/7/1996, whereby, the Government has imposed it desire to encourage the use of land allotted

to the certain persons / society etc. for the establishment of Sugarcane Research Centre. For the said purpose the Government was pleased to grant to increase the holding of the factory upto 100 acres. By keeping reliance on letter dt.20/4/88 the advocate for the appellant strongly submitted that the permission for Research Centre has been already applied for. However, after perusing the entire record I do not find '*iota of evidence*' in proved sense in favour of the present appellant to establish the fact that they had ever established such Research Centre, so as to claim the exemption or not. They have not produced any documentary evidence in proved sense to that effect atleast to prove this fact the factory has to lead sufficient evidence by pleading, but, no done so. Simply by showing that they desires to establish Research Centre for claim the exemption is not sufficient. In addition thereto, all these decisions have been passed by the State after the commencement date i.e. 2/10/75. After all it is necessary for the Tribunal to consider the facts and circumstances as on 2/10/75 and not subsequent event took place or the decisions made by the State Government by keeping in mind the several circumstances for the development of new research centers. If at all the factory has proved its requirement on such legal ground they may acquire new land, but, earlier holding cannot be exempted under the guise of such presumptive development and use of earlier holdings by taking the aid and assistance of the Government Notifications and new policies adopted after the commencement date. In short, in the given set of facts, the mere oral submissions made by the Ld.advocate for the appellant will not sufficient to exempt the holding of 100 acres from the total holding of the factory, so as to bring them out of the clutches of ceiling limit. In short, on this count also I am of the view that these submissions either not sufficiently proved or not even tenable being depends upon the subsequent events took place after the commencement date not sustainable in eye of Law.

17. Last but not the least, Issue in respect of the acquisition of the portion of 1H 56R by the Government for public purpose i.e. for the MSEB, for the Govt.Play-ground authority etc. In respect of these submissions also I am of the view that the submissions made in written arguments are not proved by sufficient pleadings duly verified or evidence lead in form of affidavits. Oral submissions to that effect are not sufficient even to consider the same for the exemption sought.

18. In view of the above observations, it has become evident that, the appellant / factory has failed to exercise the sufficient remedies available to them to plead and prove the grounds of exemptions available to them by sufficient documentary evidence in proved sense to that effect. In addition thereto, it was incumbent to appellant to prove as to how the Government Policies, decisions which are passed subsequent to the commencement date, should be applicable to the present case. As observed in Paras supra, it has become evident that, all Government decisions so far as the exemption on certain grounds have been already passed by the Government subsequent to

the commencement date. In the given set of facts, I am of the humble opinion that in order to claim the exemption, none of the Government decision is helpful for the appellant / factory so as to come out of the clutches of ceiling limit. After all if the factory has proved its bonafides they are at liberty to seek further additional Govt.Land for their public purpose, but, should not retain the land which is already in their possession against the provisions of Ceiling Act. Under these circumstances, I am of the view that not only the appeal preferred by the factory, but, the entire *lis* conducted by the appellant was without bonafides. Even they have not tried to prove the grounds available to them in strict sense. Therefore, I hold that the SLDT has rightly followed the provisions of Ceiling Act and come to the conclusion about the excess holding of the factory on the commencement date. Therefore, same does not call for interference therein. With these observations, I answer the 'Point No.1 in affirmative' and 'Point No.2 as per final order'.

19. Before closing the judgment at last I may state here that, at first the factory has failed to submit the Return through they were holding excess land on the commencement date till 1996. Thereafter, since 1996 onwards till today they have exhausted as many as three rounds of litigation, 1st direct upto Hon'ble High Court, and 2nd & 3rd upto MRT. None of the order has ended in their favour for grant of exemption on major ground. In that context, failure to submit the Return / pleadings or to appear in the witness box, to prove the grounds of exemption against the excess holding makes it easy to hold that the appellant was not diligent in enquiry. Therefore, I am of the view that this is the fit case for imposing reasonable costs and i.e. upto Rs.20,000/-. With these observations, by making the observations regarding the costs to be imposed under Rule-36 made under the Act, I proceed to pass the following order.

ORDER

Appeal is hereby dismissed with costs of Rs.20,000/-.

The judgment & order passed by the SDO Wai / SLDT Wai in Ceiling Case No.1/97, dt.15/7/2005 is hereby confirmed. The holding of the appellant out of total holding after deducting the permissible holding under different Heads, area of 113H 09R is hereby declared as surplus holding of the appellant and the order passed by the SLDT to that effect is also confirmed.

R&P received from the SDO Wai be sent back immediately.

Intimation of this order be sent to both the parties & lower tribunals, so as to take appropriate steps as per the provisions of Law in respect of the excess holding, which has been confirmed by this Tribunal.

Appellant is hereby directed to pay the costs of Rs.20,000/- to the State and shall bear their own. If the costs is not paid within one month, the State shall recover the same as the arrears of land revenue.