

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

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

No.TNC/REV/167/07/SH

Sadashiv Digambar Joshi,
R/o.Bavi, Tal.Madha, Dist.Solapur.

.....Applicant

VS.

Vishnu Digambar Joshi & otrs.,
R/o.Malinagar, Tal.Malshiras, Dist.Solapur.

.....Respondents

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

Appearance :- Adv. Shri A.L.Morepatil for Revision Applicant
Adv. Shri Katore for Respondents

DATE:- 23rd APRIL, 2018

JUDGMENT

Being aggrieved by the judgment & order passed by Ld.appellate tribunal i.e. Sub-Divisional Officer, Madha Sub Dn.,Kurduwadi (hereinafter referred as the “appellate tribunal”) in Tenancy Appeal No.3/2006, dt.27/7/2007, the aggrieved applicant who was one of the appellant before the Ld.appellate tribunal, 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 giving rise to the present revision application can be summarized as under.

2. One Shri.Digambar Joshi was the original owner of the disputed lands, Shri.Keru Surve was the tenant in possession over the disputed land since prior to the "*Tillers Day*". After the death of Digambar Joshi, the property was represented by his three sons Sadashiv, Vishnu & Mahadeo. Out of three co-owners Mahadeo, was in Military service and therefore, the proceedings have been conducted in respect of disputed lands to the extent to the share of Mahadeo Joshi. After the proceedings being conducted in respect of share of Mahadeo, he was put in possession of land Gat No.484. After obtaining possession of the disputed land as per the provisions of Sec.43(1A) of the Act, the land-owner Mahadeo, sold a portion of 1 H. 93 R. to Dattatraya More under a sale-deed dt.11/4/91. Thereafter, on 2/5/91 again he has sold a portion of 42 R. from the said gat number to Bhagwan Kharat. His brother Sadashiv also sold a portion of 1H. 81R. from the said gat number to Dattatraya More under a sale-deed dt.27/5/91. On the basis of said transfer-deeds M.E.No.918, 920 and 925 came to be certified in revenue record. After certification of those entries, the brother of Mahadeo named Vishnupant filed an objection before the Ld.trial tribunal alleging that the transfers effected in the name of Dattatraya More & Bhagwan Kharat have effected without prior permission of the tribunal or the authority constituted under the Act. Therefore, the said transfers being in contravention of Sec.43 of the Act, the land should be forfeited to the Government. In support of his claim, objector Vishnupant has specifically contended that, there is no partition of the disputed land amongst the brothers interse and still then, without obtaining the permission from the Competent Authority under the Act, the transfers being effected be declared as void. By taking the note of objections raised in the first round of litigation matter went upto Ld.appellate tribunal through tenancy appeal No.6/97. Then SDO Madha while deciding the said appeal found certain material errors committed by the Ld.trial tribunal while holding the enquiry and trial. Therefore, the matter was remanded to ALT Madha. Thereafter, again the matter was re-heard before ALT in tenancy case No.5/2001 and by order dt.28/10/2005 the transfers so effected in favour of Third Party, other than tenant declared void and the transfer effected in favour of the tenant, it was regularized subject to payment of penalty imposed against the said transfer.

3. Being aggrieved by the said judgment & order the purchasers Dattatraya More & Bhagwan Kharat as well as Sadashiv have taken the matter before Ld.appellate tribunal in tenancy appeal No.3/2006. The Ld.appellate tribunal while deciding the said appeal by order dt.27/7/2007

confirmed the order passed by Ld.trial tribunal, and thereby, upheld the order of Ld.trial tribunal.

4. Being aggrieved by the concurrent findings recorded by Ld.trial tribunal even after remand, the aggrieved Sadashiv Digambar Joshi alone preferred the revision application. Pending the revision except the purchaser i.e. Dattatraya More & **Prabhakar Surve** / tenant, nobody have appeared before this Tribunal. Efforts made by the Tribunal to secure the presence also failed invain.

5. After perusing the record & proceedings from both the tribunals below, order passed by the respective tribunals in the matter, I do find that the pure question of law being involved in the matter, it is required to be decided on merit, though the applicant is not diligent in prosecuting the matter. Therefore, chance of hearing was given to the purchaser through their advocate Shri.Katore, who has submitted written arguments on record and also produced relevant transfer-deeds for the perusal of the Tribunal. After perusing the order passed by tribunals below and submissions made by the advocate for the purchaser, 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 transfers made by Mahadeo & Sadashiv Joshi land-owner, hit by the provisions of Sec.43 of the Act?	Negative
2.	If not, whether the judgment & order passed by the tribunals below which are concurrent in nature sustain in eye of Law?	Negative
3.	If not, whether the judgment & order passed by the tribunals below calls for interference therein, and if yes, upto what extent?	Yes, As per final order

Reasons

6. Point No.1,2&3: After perusing the record & proceedings from both the tribunals below it has become evident that, disputed land Gat No.484 subsequently recorded as Gat No.483/3 in the revenue record. So far as the dispute of tenancy is concerned, it amply suggests that tenancy rights of Ramdas Surve were recognized in the earlier proceedings. A portion from

disputed gat number was sold by Sadashiv Joshi to tenant and that too without permission from the tribunal. As such said transfer in favour of the tenant was also effected without permission, it was hit by the provisions of Sec.43 of the Act. However, as the transfer was in favour of the tenant, it has been regularized by the tribunals below and same has been upheld by the Ld.appellate tribunal. Therefore, transfer to that effect which is in favour of tenant / Ramdas Surve is not the subject matter of the present revision application.

7. In view of above observations it has become crystal clear that the brother of Petitioner, who is the respondent No.1 Vishnu Joshi, has raised dispute regarding the validity of **sale-deeds executed by Sadashiv and Mahadeo as detailed below:**

Date of sale-deed	Name of executant	Name of purchaser	Area (H.R.)
27/5/91	Sadashiv Joshi	Dattatraya More	1.81
11/4/91	Mahadeo Joshi	Dattatraya More	1.93
2/5/91	Mahadeo Joshi	Bhagwan Kharat	0.42

8. In view of above facts, it has become evident that, the objection raised by Vishnu Joshi, is twofold, at one hand he strongly contended that there is no partition of the disputed land amongst the brothers interse and therefore, transfer is hit by the provisions of the Act. However, there is no substance, particularly when M.E.No.218, dt.31/12/75 is the best document on record, whereby partition amongst three brothers being duly proved and recorded in the revenue record. Said entry was not ever challenged by Vishnu Joshi at any time or atleast I may state here that, that entry has reached to its finality.

9. Now after perusing these three sale-deeds quoted supra, it has become evident that alleged transfers have been executed by the co-owner of the land in favour of the Third Party. The legal provisions of the Act, are self-explanatory to the effect, that the provisions of Sec.43 & 84C will come into play only in case of the statutory ownership restricted as granted on new tenure. In short, such restrictions are ever against the tenant who acquired the title as the beneficiary owner under the Act. The land-owner / landlord is not the beneficiary under the Act, claiming title over the disputed land, which ever vest with him, which is the subject matter of disposition under the Act. Admittedly, the disputed land which has sold

stands in his name as the owner in possession. The tenant is not disputing the legality of the disputed transfers. In view of conjoint reading of Sec.43 & 84C of the Act, makes it crystal clear that transfer made by landlord does not required pre-permission, but, same is ever subject to the control of provisions of Sec.37 of the Act, wherein a right has been given in favour of the tenant to have a restoration of possession if the breach of condition embodied in Sec.37 is proved. In short, except the tenant nobody has legal right to challenge the legality of the transfers made by the owner in the capacity of his ownership. Admittedly, herein this case owner has not obtained the possession u/s 29 of the Act, on the ground of bonafide requirement. No dispute u/s 37 of the Act, raised by the tenant himself. Therefore, dispute between the brothers interse / co-owners have no right to invoke provisions of Sec.84C of the Act, so as to invalid disputed transactions. In the given set of facts, I am of the view that the powers invoked by the Ld.trial tribunal in respect of disputed transfers and confirmation of that order made by the Ld.appellate tribunal is not at all lawful. The Ld.trial tribunal as well as Ld.appellate tribunal ought to have considered the scope and ambit of Sec.84C of the Act, before invoking the powers to invalid the transfers which have not even made by the owner who has acquired title on new tenure. In short, I am of the view that the transfers which are challenged by co-owner u/s 84C of the Act, does not come within the ambit of said Section. The Tribunal constituted under the Act, has no reason to invoke the powers for declaring the said transfers as contrary to the provisions of the said Act, when ownership is not granted on new tenure. Therefore, question of application of Sec.84C within the reasonable period and application of precedents relied by the advocate for the respondents does not survive in the present proceedings. On the contrary plain reading of the provisions makes it crystal clear that the provisions of Sec.84C is not applicable to the disputed transactions made by the co-owner. Therefore, as the Ld.trial tribunal as well as Ld.appellate tribunal has committed error of Law while deciding the matter at their respective hand at the respective stage, deserves to be set aside by invoking the powers of this Tribunal u/s 76(1)(a) of the Act. With these observations, I answer the 'Point No.1 & 2 in Negative & Point No.3 as per final order' and proceed to pass the following order.

ORDER

The revision application is hereby allowed.

The judgment & orders passed by the Ld.trial tribunal as well as Ld.appellate tribunal declaring the disputed transfers made by the co-landowner as against the provisions of Law are hereby set aside.

Forfeiture of the disputed land in favour of the State is hereby set aside.

The Revenue Authorities are hereby directed to take effective note of the same in respect of the disputed land record.