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**BEFORE THE MAHARASHTRA REVENUE TRIBUNAL**  
**CAMP – KOLHAPUR**  
**(CORAM : M.M. POTDAR, MEMBER (Judicial))**

**REVISION APPLICATION No. – KP/99/2008**

**Babu Sattu Gilbile since deceased represented by )**

**1. Gangubai Babu Gilbile and others ) ---- Applicant**  
**R/o Naganwadi, Taluka –Chandgad, )**  
**District – Kolhapur )**

**V/S**

**1. Prabhakar s/o Shankar Hasabnis, )**  
**R/o C/o Vishnu s/o Vithoba Baleri, ) --- Respondents**  
**Vyanketesh hotel near city bus stand )**  
**Miraj, District – Sangli. )**

**Revision Applications u/s. 76 of**  
**The Bombay Tenancy and Agriculture**  
**Lands Act .1948.**

**Appearances –**

**Adv. P.B. Patil for revision applicant.**

**Adv. Satish Kumbhar for revision respondent No. 1.**

**JUDGMENT**  
**( Delivered on - 13/08/2018)**

1) Revision applicants claiming to be tenants have challenged legality, propriety and correctness of the decision given by Sub-Divisional Officer, Gadhinglaj in Tenancy Case No. 27/2003 on 29-12-2007.

2) Sub-Divisional Officer has allowed the application filed by Prabhakar Shankar Hasabnis filed u/s 43(1) B r/w 29(3-B) of The B.T. & A.L. Act, 1948, for possession of suit lands as stated in application of village Koraj

  
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Tal. Chandgad for personal cultivation on the ground that he has terminated tenancy of opponents.

3) Heard arguments. Also perused notes of arguments.

4) Irrespective of the arguments submitted by both the sides, on perusal of record and proceedings one glaring defect noticed in following the procedure laid down in The B.T. & A.L. Act, 1948 by Trial Court i.e. by Sub-Divisional Officer Gadhinglaj while deciding the matter.

5) In this case Tenancy Avval Karkun has recorded the evidence of the parties. He also appears to have given opinion on 28/7/2006 after recording the evidence of parties in the form of letter (page no. 285 from the file of Trial Court.) Last two paragraphs from that letter are reproduced hereunder showing as to how Tenancy Avval Karkun Chandgad dealt with the matter.

“ प्रस्तुत अर्जदार हे सैन्यदलातून निवृत्त असून त्या मुदतीत कूळ हक्क नष्ट करणेची नोटीस कूळांना दिलेचा पुरावा पुढे आलेला आहे. सैन्यातून व्यक्ती निवृत्त होवून आलेने व पुढे आलेल्या पुराव्यावरून अर्जदारास स्वकसवणुकीस जमीनीची गरज असल्याचे चौकशीत सिध्द झाले आहे. तथापि पुढे आलेल्या पुराव्याच्या कागदपत्रावरून मागणी केलेल्या गट नं. २८८, ३२४, ३२६, ३२२, ३५८, ३२६, ३६८, २८६ या जमीनीबाबत मुंबई कुळ कायदा १९४८ चे कलम ३२ ग प्रमाणे काम चालून या जमीनी सरकार मार्फत कूळांना रितसर खरेदी दिल्याचे पुढे आले आहे. वाद मिळकतीमधील इतर हिस्सेदारांचे हिस्से तदनंतर ३२ ग कलमाप्रमाणे कूळांनी जमीनी खरेदी केल्याने. अर्जदार यांचा शिल्लक हिस्सा स्वतंत्र झाला आहे. त्यांचा एकत्र कुटुंबातील हिस्सा त्यांचे मालकी हक्काचे आणेवारी

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प्रमाणे स्वतंत्र झाला असलेबद्दल मला तहशिलदार यांचे अधिकार प्रदान केलेले असल्याने अर्जदार यांचा हिस्सा, क्षेत्र, आकार व पीकाचे वर्गीकरणानुसार स्वतंत्र झाला असलेबद्दल माझे तहशिलदार या नात्याने समाधान झाले आहे.

अश्या परिस्थितीत, वर नमूद केलेल्या जमीनी सोडून इतर जमीनी बाबत अर्जदाराचे मागणी प्रमाणे अर्ज मंजूर करणेचे आदेश निर्गमित करणेस सक्षम अधिका-यांना काही अडचण दिसून येत नाही. चौकशीची कागदपत्रे एक संचिकेत पान १ ते २८३ सह यासोबत सादर केली आहेत.

सही/-

टेनन्सी अव्वल कारकून  
चंदगड

- 6) On perusal of the judgment and order of Sub-Divisional Officer Gadhinglaj it appears that the decision given by him is nothing but decision given by Tenancy Avval Karkun and he i.e. Sub-Divisional Officer has put his signature in compliance with the formality.
- 7) Now coming to the relevant provisions of The B.T.& A.L. Act, 1948 are concerned, special provisions for termination of tenancy by landlords who are or have been serving members of the armed forces and for purchase of their lands by tenants are given in Chapter III-AA of the said Act. For the purpose of this Chapter, Collector/Assistant Collector/Sub-Divisional Officer is a Trial Court. There is no provision in the said Act for delegation of powers to his sub-ordinates by Collector/ Assistant Collector/Sub-Divisional Officer. There is no provision in the said Act to seek opinions from his sub-ordinates by the Collector/ Assistant Collector/Sub-Divisional Officer. He being a Trial Court as well as fact finding Court has to follow the provisions laid down in Chapter VI of the said Act. He has to record the evidence of the parties

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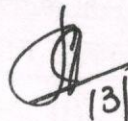
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himself. He himself has to appreciate the oral as well as the documentary evidence, if any, tendered by the parties and then to give decision.

8) In the present case, Sub-Divisional Officer being Trial Court as well as fact finding Court has not recorded the evidence of the parties, nor appreciated the evidence tendered by the parties, but he has given his task to Tenancy Avval Karkun Chandgad for which the law does not permit to do so. Therefore only on this material ground the decision given by Sub-Divisional Officer Gadhinglaj is liable to set aside and matter needs to be remanded back to him for fresh inquiry with certain directions. Hence, holding the decision given by Sub-Divisional Officer in Tenancy Case No. 27/2003 dated 29-12-2007 being illegal and improper, it is set aside and following order is passed.

### ORDER

1. Revision application is allowed on following terms :-
  - i) The decision given by Sub-Divisional Officer Gadhinglaj in Tenancy Case No. 27/2003 on 29-12-2007 is set aside.
  - ii) The matter is remanded back to Sub-Divisional Officer Gadhinglaj. He is directed, he being Trial and fact finding Court, to follow the procedure given in Chapter VI of B.T. & A.L. Act, 1948, i.e. he has to record the oral as well as documentary evidence of parties, he has to appreciate the evidence tendered by the parties by applying his judicial

  
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mind and then to give his decision and should not hand over his task to his subordinates.

2. Communicate this decision to parties concerned.