

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

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

No.NS/VI/2/2015Shampuri Guruhirapuri Gosavi,
R/o. Aundh, Tal.Khatav, Dist.Satara.

.....Applicant

VS.

- 1) Anantpuri Rampuri Gosavi
 - 2) Lalgiri Balgiri Gosavi
D/H—
 - a) Vilas Lalgiri Gosavi
R/o.BSUP Project, Indrayani Society, 'A' Wing,
Flat No.709, Varje-Malwadi, Behind Garden City,Pune.
 - b) Kisan Lalgiri Gosavi
 - c) Bhimrao Lalgiri Gosavi
 - d) Rambhau Lalgiri Gosavi
 - 3) Dilippuri Guruhirapuri Gosavi,
Except 2(a)-All R/o. Aundh, Tal.Khatav, Dist.Satara.
-Respondents

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

Appearance :- Adv. Shri R.S.Bahulekar for Revision Applicant
Adv. Shri J.P.Dhaytadak for Respondents

DATE:- 17th APRIL, 2018**JUDGMENT**

Being aggrieved by the judgment & order passed by Ld.appellate tribunal i.e. Sub-Divisional Officer, Man-Khatav Sub Dn., Dahiwadi (hereinafter referred as the “appellate tribunal”) in Tenancy Appeal No.2/2014, dt.7/5/2015, the aggrieved appellant therein 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. Shri.Anantpuri Rampuri Gosavi, initially filed RCS No.224/76 against Shampuri Gosavi and others for the relief of perpetual injunction alleging the possession over the disputed land as the tenant in possession since prior to 1957. In the first round of litigation before Civil Court, when the matter has went upto first appellate court, the plea of tenancy being hotly contested the Judgment & Decree

dismissing the suit for injunction has been reversed and matter has been remanded to the trial court. During the course of trial after remand recent Issues framed on 1/10/99, wherein Issue No.9 was framed in respect of relationship with the disputed land amongst the parties to the suit as under:-

Issue No.9:- *Whether the Plaintiff proves he was a tenant in suit land?*

3. The said Issue came to be referred to tenancy tribunal as per Sec.85A of the Act. After the reference being received through Civil Court after 1999, the proceedings for the determination of relationship between the parties as landlord and tenant started before the tribunal below. The Ld.trial tribunal i.e. ALT has come to be conclusion that the Plaintiff is entitled for declaration of ownership as "Deemed Purchaser" as the tenant in possession on the "Tillers Day" and thereby, passed the impugned order declaring the price of the disputed land. Being aggrieved by the said judgment & order the aggrieved Defendants in original suit have preferred the tenancy appeal before SDO, which came to be dismissed by the judgment & order dt.7/5/2015 which is under revision.

4. After receipt of record & proceedings from both the tribunals below, I have heard Ld.Adv.Shri.Bahulekar for the Revision Petitioner & Ld.Adv.Shri.Dhaytadak for the respondents. After perusing the R&P from both the tribunals below and submissions made on the facts as well as Law involved in the matter, 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 judgment & order passed by tribunals below i.e. ALT as well as SDO, are the decisions within the meaning of Sec.72 of the Act?	Negative
2. Whether the judgment & order passed by tribunals below is contrary to Law, exceeding the limits of Reference made u/s 85A of the Act, and suffered by substantial defect in following the procedure prescribed by the Act, or mis-carriage of justice has been resulted in the decision making process? If yes, what order	Yes, As per final orders

Reasons

5. **Point No.1&2:** After hearing both the Ld.advocates at length it has brought on record that the Ld.trial tribunal has failed to follow the procedure prescribed under the provisions of MLRC, Rules made under the provisions of Sec.72 of the Act, and the provisions of Sec.7 to 20 of Mamlatdar's Courts

Act, 1906, while holding the enquiry or the trial in the matter at their hand. It is pertinent to note here that while making Reference u/s 85A of the Act, Ld.Civil Judge has referred only Issue No.9, which has been quoted in Para supra and thereby, called upon the findings on the point of relationship between the parties and its existence either in past or in present. Nowhere Issue of ownership or declaration u/s 32G was ever referred to the tribunal. However, while passing the judgment & order which is under challenge, Ld.trial tribunal i.e. ALT has not only failed in its duty, but, also exceeded the jurisdiction while deciding the matter at hand. It is pertinent to note here that when the Reference is made to the tribunal, it is expected that they should restrict their findings only on the Issue referred to them. In view of the Issue No.9 which was referred by the Civil Court was for findings on the point of relationship between the parties as landlord and tenant. The tribunal ought to have decided Issue only to that extent. However, without recording the findings either in 'positive' or 'negative' about the relationship with the disputed land, the Ld.trial tribunal in its operative order proceeded further to fix the price of the disputed land u/s 32G of the Act, which was beyond the jurisdiction of the tribunal, as it was not the matter referred to the tribunal by the Civil Court.

6. In addition thereto it is pertinent to note here that serious issue in respect of succession of original landlord Shri.Hirapuri Gosavi is involved in the matter. Admittedly Shri.Hirapuri Gosavi was the original owner of the property who died on 16/1/1971. Admittedly disputed land was his private landed property. However, though he died issueless the interest in the intestate property left by him has been claimed by his disciples and not by way of rule of succession. In addition thereto, whether the present Plaintiff in RCS No.224/76 can claim tenancy over the disputed land, having regard to the close relationship interse with the landlord was the serious issue involved in the matter. However, same has not been dealt with according to Law, for all these points being involved, tribunals below ought to have record evidence from both side and then consider the documentary evidence on record. Unfortunately, such procedure has not followed by Ld.trial tribunal as contemplated u/s 69, 72 of the Act, r/w Rule 44A,B made under the Act r/w Sec.7 to 20 of Mamlatdar's Courts Act. Unfortunately, nothing has done before Ld.trial tribunal as per said procedure. Even Ld.appellate tribunal has also failed to consider all these material defects in trial, while deciding the appeal.

7. Thirdly, after perusing revenue record in respect of the disputed land, it has become crystal clear that the entries in 7/12 extracts are not ever consistent. Initially entry No.1108 is in favour of the

Plaintiff. However, by certification of M.E.No.1193 the name of the tenant which was appearing in other rights column & column of cultivation, came to be deleted. Under these circumstances, Issue of relationship as landlord & tenant has become a serious Issue. Not only that, but, whether the Defendants / owner was ever in possession of the disputed land at any particular point of time is also serious issue involved in the matter. However, after perusing the entire proceedings from Ld.trial tribunal, it has become evident that both the parties have not laid evidence in support of their rival contentions either in support of Plaint or in support of pleadings raised in written statement before the Civil Court. Why the Ld.trial tribunal has failed to follow the provisions of Sec.7 to 20 from Mamlatdar's Courts Act, r/w Sec.227 to 231 of MLRC or Rule-44 & 41A, 44B from the B.T.& A.L.Rules, 1956, has remained unanswered. However, all these observations are sufficient to make it clear that the Ld.trial tribunal has failed to follow the proper procedure contemplated for conducting enquiry and trial under the provisions of the Act. By failure committed by the Ld.trial tribunal certainly mis-carriage of justice has been caused for both the parties. In absence of sufficient evidence in support of pleadings put forth, Issue of relationship over the disputed land cannot be correctly appreciated. Not only that, but, when revenue record is not consistent as regards the entries in the other rights or otherwise column of cultivation, oral evidence from both the parties plays vital importance. By keeping in mind all these aspects and after perusing record from the Ld.trial tribunal, I come to the conclusion that the Ld.trial tribunal has miserably failed to follow the procedure contemplated for enquiry and trials under the provisions of the Act. Therefore, the findings recorded by Ld.trial tribunal does not comes within the ambit of Judgment with reasonings as contemplated u/s 19(4) of Mamlatdar's Courts Act, 1906 r/w Sec.72 of the Act.

8. After perusing the judgment & order of Ld.appellate tribunal surprising things come on record that the Ld.appellate tribunal has also failed to consider the procedural irregularities committed by Ld.trial tribunal, whereby mis-carriage of justice has been caused to both the parties. However, without considering the material evidence on record Ld.appellate tribunal has gone one step further more and confirmed the judgment & order under appeal which does not sustain in eye of Law.

9. In short, as observed supra, the Ld.trial tribunal as well as Ld.appellate tribunal both have failed to consider the mandate of procedure required to be followed at the time of enquiries and trials u/s 85A of the Act. So also the Ld.trial tribunal has exceeded his jurisdiction and thereby, proceeded to decide the price of the land under the Act, when issue of relationship which is in dispute not yet reached to its

finality and, which was not asked for by the Civil Court, while making Reference u/s 85A of the Act. It is well settled principle of law, that when the Reference is made by the Civil Court, the tribunal should limit its jurisdiction only to the extent of Issues referred and not beyond it. On this touchstone also the judgment & orders passed by both the tribunals below does not sustain in eye of Law and suffered from irregularities within the meaning of Sec.76(a)to(c) of the Act, and therefore, calls for interference therein through this Tribunal. With these observations, I answer the 'Point No.1 in Negative & Point No.2 in Affirmative and as per final order' and proceed to pass the following order.

ORDER

The revision application is allowed.

The judgment & orders passed by both the tribunals below are hereby set aside.

The matter is remanded back to ALT Khatav (Vaduj) with direction to decide the matter as afresh after offering proper opportunity to both the parties and to restrict the decision within the limits of Issue referred for the decision of the tribunal by Civil Court.

The Ld.trial tribunal is hereby directed to decide the matter as afresh without being influenced by the observations made by this Tribunal in Paras supra.

Matter being petty old, the Ld.trial tribunal is hereby directed to decide the matter within six months from the receipt of the record and, in the event of appeal against it by any party, the Ld.appellate tribunal is hereby also directed to take note that the tenancy reference through Civil Court is pending since 1999 in RCS 224/76 and same which is pending on the file of CJJD Vaduj since then, and to get the matter decided at the earliest on top priority.

Certified copy of the judgment & order be sent to CJSD Vaduj, in compliance of Sec.85A(2) of the Act, in respect of RCS No.224/76 for information and necessary action.