

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

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

No.SH/VI/1/86

Shri Ghudubhai Huseni Nadaf
D/H—Babulal Ghudubhai Nadaf & otrs.,
R/o. Malkavathe, Tal.South Solapur,
Dist.Solapur.

.... Applicants

VS.

Shri.Nemajirao Dharerao Deshmukh & otrs.,
R/o. 97, Railway Lines, Solapur-413 001.

.... Respondents

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

Appearance :- Adv. Shri A.G.Kulkarni for Revision Applicants.
Respondent No.1 in person.

DATE:- 31st JANUARY, 2017

JUDGMENT

1. The applicants have preferred the present revision application by invoking the provisions of Sec.76 of B.T.& A.L.Act, 1948 (hereinafter referred "the Act") against the judgment & order passed by the appellate tribunal i.e. Sub-Divisional Officer, Solapur Sub Dn., Solapur (hereinafter referred as the "SDO") in Tenancy Appeal No.19/85 on the grounds more particularly set out in revision application. Parties hereinafter referred in the same sequence and chronology in which they were referred before the ALT South Solapur, as the applicants or the respondents as the case may be. The facts giving rise to the present revision application can be summarized as under.

2. The land S.No.87/2 & 87/5 situated at Village Malkavathe, Tal.South Solapur owned by Dharerao Deshmukh, R/o. Malkavathe. Dharerao Deshmukh who was mentally ill-health patient. The present Opponents claims to be the tenant in possession in the suit property since prior to 1944 onwards. As the land-owner was lunatic, his lands were taken under management by Courts of Wards. On 27/10/82 the applicant came to be appointed as Manager for the estate of the mentally ill-health patient through the order of the District Court. Therefore, the applicant-

tenant in possession moved an application exercising the right to purchase of the suit lands before ALT South Solapur. The said proceedings contested by the parties. The respondent on behalf of land-owner / Manager appointed by the District Court i.e. the son of the landlord filed a detailed say, which is at page-19 of ALT's file. He has specifically contended that there is no relationship with the applicant as landlord and tenant at any point of time. Both the lands were already vested with the custodian under the provisions of Court of Wards Act. Therefore, when there is no relationship between the parties as landlord and tenant, question of exercising of right to purchase the same under the Tenancy Act does not survive. Further, he has specifically contended that so called "eksala agreement" come to an end w.e.f. 28/2/1986 and since then the applicants are in illegal possession. They are not entitled to have a declaration or certificate u/s 32G of the Act. In alternative he has also contended that when the land-owner is under legal dis-ability, proceedings u/s 32G cannot be continued as per the provisions of Sec.32F of the Act and on all these counts application deserves to be dismissed.

3. During the trial, parties have led sufficient oral as well as documentary evidence before the ALT. After considering the record placed before him, ALT through his order dt.31/3/84 come to the conclusion that the applicant is the tenant in possession. However, land-owner being under legal dis-ability the effect of "*Deemed Purchase*" stands postponed till the legal dis-ability is removed.

4. Being aggrieved by the said judgment & order passed by ALT South Solapur, the land-owner has preferred Tenancy Appeal No.19/85 before the SDO Solapur. The said appeal came to be decided on merit. Ld.appellate tribunal allow the appeal by the judgment & order dt.21/4/86, whereby, he has set aside the order of effect of postponement of "*Tillers Day*" and directed the applicant / tenant to move the Tribunal for seeking declaration of his status as a tenant in possession before ALT. The said judgment & order is under challenge before this Tribunal through revision application No.SH/VI/1/86. At the first round of litigation, said revision application came to be dismissed by order dt.27/11/87. The said order came to be challenged before the Hon.High Court of Judicature at Bombay in Writ Petition No.3862/88. The said Writ Petition came to be decided by judgment & order dt.5/6/2003, whereby, Hon.High Court has remanded the matter back to MRT Pune for deciding the same as afresh and since then the revision application again remained pending on the file of this Tribunal.

5. Today, I heard Ld.Adv.Kulkarni for the Revision Petitioner /tenant and the applicant / landlord in person. He has also filed written say on record in support of the judgment & order passed by the Ld.appellate tribunal, which is under revision.

6. Perused the R&P from both the tribunals below. Heard Ld.Adv.Kulkarni for the Revision Petitioner and Respondent in person. After perusing the entire record, documents alongwith it and after considering the submissions made from both the sides 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 Ld.appellate tribunal in Tenancy Appeal No.19/85 sustain in eye of law ?	Partly negative requires modification as per final order
2.	If not, up to what extent interference therein is required for at the hands of this Tribunal within its limited revisional jurisdiction ?	As per final order

Reasons

7. **Point No.1:-** After perusing the 7/12 extracts from the record of ALT at page-29 to 39, it amply suggest that the name of the Husen Bandubhai Nadaf / predecessor-in-title of the present applicants appears in the column of cultivation from 1949-50 till this date. Column which relates to the mode of cultivation gives sufficient indication that the said land is in possession of Husen Nadaf by showing Rit-5, which is known for mixed mode of cultivation i.e. partly by paying rent and partly share in crop, which is the valid source of tenancy. However, in the light of defense set up by the Opponent / landlord through his Manager, amply suggest that induction of the so called tenant through the Court of Wards under the special statute is ever challenged. Mere continuation of entries is not sufficient to establish the tenancy rights, but, it requires separate proof, so as to establish legal relationship of landlord and tenant. In support of above observations, I may keep reliance on the precedent laid down by Hon.Supreme Court *in case of Hanmant Vs. Babasaheb Londhe, reported in AIR 1996, SC-223*. The preposition of law laid down therein by Hon.Supreme Court can be summarized as under :-

"Burden is on the tenant to establish his lawful possession and relationship as a tenant with his landlord. Mere entries in ROR and that too without notice to the landlord or payment of land revenue without notice or its acquiescence by landlord cannot establish tenancy."

8. Unfortunately, herein this case, this issue has not independently dealt with by the court of first instance i.e. ALT. In short, it requires detail investigation as to the right of the present Opponents to challenge the tenancy and their induction through the Competent Authority. Issue of competency of Authority under Court of Wards Act to play the role of landlord to create relationship of landlord & tenant remained unanswered. In that context, even without disputing the legal disability attached with the landlord on the "Tillers Day", it is pertinent to note here that, whether induction of number of persons with the landed property owned by

mentally ill-health patient creates statutory relationship as landlord and tenant raised material issue, which cannot be decided at the first hand before this Tribunal. In that event, if the tenancy is established that will take the effect of *"Deemed Purchase"* soon after the death of the original landlord subject to the strict compliance of Sec.32F of the Act. However, if the valid source of induction is not proved the question of following the effect of the provisions of *"Deemed Purchase"* does not survive. These two complicated issues required to be dealt with in proper manner before the court of first instance. Hence, I am of the humble opinion that, when right of declaration of *"Deemed Purchase"* has to be exercised simultaneously, issue of relationship can be dealt with by ALT in the same proceedings. In that light, consequential effect of postponement of right can also be entertained. However, all these issues being mixed question of facts and law, required to be dealt with by the tribunals below, which is known as court of first instance. With these observations, I do find that the judgment & order passed by the Ld.appellate tribunal does not sustain in eye of law, so as to postpone the effect of *"Tillers Day"*. At the same time issue of tenancy which is Opponent used to contest can be decided in its proper spirit in the same proceeding. If the parties have left at their choice to raise all these material issues before the court of first instance. In the given set of facts judgment & order passed by the Ld.appellate tribunal i.e. SDO Solapur in Tenancy Appeal No.19/85 deserves to be modified and in that sequence order passed by ALT South Solapur requires to be set aside in following terms. With these reasons, I answer the Point No.1 and Point No.2 accordingly and proceed to pass the following order.

ORDER

The revision application is allowed.

The judgment & order passed in Tenancy Appeal No.19/85, dt.21/4/86 is hereby modified and the judgment & order of ALT in case No.70/83, dt.31/3/84 is set aside in following terms.

The matter is hereby remanded back to ALT South Solapur to decide the proceedings as afresh with directions to decide all the issues involved in the matter as afresh without being influenced by the observations made by this Tribunal in para supra.

However, in view of the matter being petty old, ALT South Solapur is hereby directed to decide the matter expeditiously by giving top priority and in any case within six months from receipt of the R&P through this Tribunal.

In the event if either of the party preferred appeal against it, the Ld.appellate tribunal is also hereby directed to take precaution that the appeal arising from such orders should be decided on top priority.

No order as to costs.

R&P called from the tribunals below be sent back immediately.

Intimation of this order be sent to both the parties & lower tribunals.