

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

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

No.P/I/3/2018

- 1) Smt.Sulbha Subhash Lodha
 - 2) Smt.Poonam Vikram Lodha
- Both R/o.10, Ruturaj Society,
Pune-Satara Road, Pune-37.

.....Applicants

VS.

- 1) Bhagwant Ramchandra Rade
D/H--
- a) Smt.Sunita Sharad Rade
- b) Shri.Sunil Sharad Rade
- c) Taibai Bhagwan Rade
- d) Vanita Vasant Rade
- e) Chandrajit Vasant Rade
All R/o.Koregaon Mul, Tal.Haveli, Dist.Pune.
- 2) Court Receiver, High Court, Mumbai,
Bank of India Bldg.,2nd floor, M.G.Road,
Fort, Mumbai-400 023.

.....Respondents

Appearance :- Adv. Shri R.D.Barwe for Revision Applicants.
Adv. Shri Yawatkar for Respondents

Alongwith No.P/I/2/2018

- 1) Smt.Sulbha Subhash Lodha
 - 2) Smt.Poonam Vikram Lodha
- Both R/o.10, Ruturaj Society,
Pune-Satara Road, Pune-37.

.....Applicants

VS.

- 1) Smt.Sunita Sharad Rade
- 2) Shri.Sunil Sharad Rade
- 3) Taibai Bhagwan Rade

- 4) Vanita Vasant Rade
 - 5) Chandrajit Vasant Rade
All R/o.Koregaon Mul, Tal.Haveli, Dist.Pune.
 - 6) Court Receiver, High Court, Mumbai,
Bank of India Bldg., 2nd floor, M.G.Road,
Fort, Mumbai-400 023.
-Respondents

Appearance :- Adv. Shri R.D.Barwe for Revision Applicants.
Adv. Shri Yawatkar for Respondents

Alongwith No.P/I/1/2018

- 1) Smt.Sulbha Subhash Lodha
 - 2) Smt.Poonam Vikram Lodha
- Both R/o.10, Ruturaj Society,
Pune-Satara Road, Pune-37.
-Applicants

VS.

- 1) Smt.Sunita Sharad Rade
 - 2) Shri.Sunil Sharad Rade
 - 3) Taibai Bhagwan Rade
 - 4) Vanita Vasant Rade
 - 5) Chandrajit Vasant Rade
- All R/o.Koregaon Mul, Tal.Haveli, Dist.Pune.
- 6) Court Receiver, High Court, Mumbai,
Bank of India Bldg., 2nd floor, M.G.Road,
Fort, Mumbai-400 023.
-Respondents

Appearance :- Adv. Shri R.D.Barwe for Revision Applicants.
Adv. Shri Yawatkar for Respondents

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

DATE:- 25th SEPTEMBER, 2018

COMMON JUDGMENT

Common question of fact and Law being involved in all these three revision applications, wherein parties as well as the subject matter of the dispute being the same, I have proceeded to decide all these three revision applications by way of common judgment. For the purpose of brevity and convenience parties hereinafter referred in the same sequence and chronology in which they were referred in revision No.P/I/3/2018 as the petitioners or the respondents as the case may be. Facts giving rise to the present *//s* can be summarized as under :-

2. The disputed agricultural land was originally belonged to one Shri.Yashwant Chintaman Datar. He has mortgaged the said property in favour of one Vishwanath D. Modi. The mortgagee in whose favour the mortgage has been executed, filed a suit before Hon'ble High Court, Judicature at Bombay, within its original jurisdiction bearing civil suit No.1146/1954 and same is still pending. The predecessor of the present respondents Shri.Bhagwan Ramchandra Rade, was asserting tenancy right over the disputed lands since prior to 1947-48. On 25/11/1971 the tenant has filed an application before ALT for fixation of price under the Act. The proceedings came to be initiated before ALT, and by order dt.5/4/1972 ex-parte order was passed in favour of the tenant and against the landlord. Therefore, the landlord has taken up the matter before the higher courts. Lastly, as per the order dt.13/9/1978 the matter has been remanded to ALT with directions given in Writ Petition No.2875/1973. Accordingly, the original proceedings of 1971 came to be re-registered at the office of ALT as file No.32G/SR/1/2004. In the said proceedings Court Receiver appointed by Hon'ble High Court, is also joined as a party to the proceedings. After considering the evidence laid and documents produced before ALT, after remand ALT has rejected the application of the tenant for fixation of price by order dt.22/8/2006. Being aggrieved by the said order the aggrieved tenant had preferred tenancy appeal No.2/2007 which came to be dismissed. Therefore, the aggrieved tenant had preferred revision application No.69/2010, which came to be decided by order dt.12/10/2012, and matter was remanded for re-hearing before Ld.appellate tribunal i.e. Sub-Divisional Officer, Haveli Sub Dn.,Pune (hereinafter referred as the "appellate tribunal"). Accordingly, the Ld.appellate tribunal has decided the appeal as a fresh and thereby, confirmed the order of ALT, dt.5/4/1972 and directed to issue certificate u/s 32M of the B.T.& A.L.Act, 1948 (hereinafter referred "the Act"). Being aggrieved by the said judgment, the aggrieved purchaser pendentelite had preferred a present revision application at Sr.No.1.

3. Pending the said *//s* the tenant / respondents have initiated the proceedings u/s 43 of the Act. The said proceedings came to be contested by the present revision petitioners and also by the Court Receiver. In first round of litigation against the order of permission u/s 43 of the Act, Court Receiver

was not party to the proceedings, but, in view of the directions given by this Tribunal in its earlier order, chance of hearing was given to the Court Receiver, who has submitted the say and contested the proceedings initiated by the tenant. After remand the Ld.appellate tribunal has re-considered the matter and come to the conclusion, that the order passed by the tribunal earlier is proper and legal and thereby, confirmed the order of permission sought by the tenant u/s 43 of the Act. Being aggrieved by the said order the aggrieved purchasers of the disputed land have preferred revision applications at Sr.No.2 and 3.

4. After the receipt of R&P from the tribunal below chance of hearing was given to the respective advocates representing the parties. Heard Ld.Adv.Shri.Barwe for the revision petitioners & Ld.Adv.Shri.Yawatkar for the respondents. In addition to the all other several factual or legal aspects involved in the matter core issue raised by the revision petitioners, while challenging the orders passed by the tribunals below in the respective proceeding is completely based on the statutory provisions of Sec.88(B)(d) of the Act.

5. Sum and substance of the submissions made by Ld.Adv.Shri.Barwe for the petitioners is that the fact of */is* in respect of the suit property in form of suit No.1146/1954 before Hon'ble High Court, is not at all disputed. Not only that, but, after perusing the record and reports submitted by Court Receiver dt.24/11/1954 before the Hon'ble High Court, it amply suggests that the Court Receiver appointed in the said suit has not only the taken possession or the management of the disputed property, but, he has submitted the compliance thereof in the said proceedings. Being aggrieved by the said order Court Receiver has preferred revision against the said order through file No.6/80 which also came to be dismissed. In view of facts proved on record, it has become evident that, the subject matter is ever comes within the purview of Sec.88(B)(d) of the Act, and therefore, the entire proceedings either initiated or decided by the tribunals below, are without jurisdiction and against the statutory provisions and of the Act.

6. As against this Ld.Adv.Shri.Yawatkar, strongly submitted that in view of the law laid down by Hon'ble High Court, in the case of **2005(1) Bom.C.R.322** , the provisions are not in form of barring the statutory jurisdiction of the tribunals below and there is no error apparent, so as to interfere in the matter. Present revision petitioners have no locus-standi to file the revision as their sale-deeds being in contravention of Tenancy Act. They have no right to enter in the shoes of aggrieved party or even to prefer revision application. In support of his submissions Ld.advocate for the respondents kept his reliance on the statutory provisions of Sec.64(8) of the Act. After giving anxious thought to the submissions made by the respective Ld.advocates, following points arise for my determination. I have recorded my findings with reasons thereon as under :-

Points**Findings**

1.	Whether the revision petitioners have established their locus-standi to prefer the revisions against the impugned orders?	Yes
2.	Whether the subject matter of the suit comes within the purview of Sec.88(B)(d) of the Act?	Yes
3.	Whether the tribunals below have committed jurisdictional error while passing the orders under revision in all three revision applications, either in issuing certificate u/s 32M of the Act, or granting permission u/s 43 of the Act, respectively?	Yes
4.	Whether the judgment & order passed in all three revision applications calls for interference therein through this Tribunal?	Yes, As per final order

Reasons

7. Point No.1: While supporting the judgment & orders passed by the tribunals below in all these three applications, Ld.advocate for the respondents strongly contended that the revision petitioners being the subsequent purchasers pending the */is* have no locus-standi to challenge the order passed by the tribunals below, which relates to the statutory right of the present respondents. In the given set of facts, suffice to quote here that the parties have not disputed the existence, execution and certification of entries based on transfers effected pending the */is* i.e. particularly since after the tenancy proceedings initiated by the present respondents i.e. from 25/11/1971 which are as under:

S.No.	Seller	Purchaser	Date of sale-deed	Certification of mutation entry, if any
1.	Yashwant Chintaman Datar (original landlord)	Sampada Maniklal Lunawat	9/7/1981	2565
2.	Sampada Maniklal Lunawat	Sulbha Lodha & otrs.,	4/5/2012	5542
3.	Yashwant Chintaman Datar (original landlord)	Sampada Maniklal Lunawat	29/6/2012	5543

8. The transfers effected in respect of the disputed land is the prima-facie evidence on record to observe that the present applicants have got substantial right in immovable property which is the subject matter of */is* and which should have to be decided by the tribunal. Simply by relying upon the provisions of Sec.64(8) of the Act, no one can say that the transfers effected by the landlord in favour of the third party other than the tenant being persay, void and illegal, their right of contest should have to be rejected. In short, prima-facie, there is sufficient evidence to observe that the present applicants being the subsequent purchasers pending the */is* have got substantial right to agitate the litigation as an "aggrieved persons" within the meaning of Sec.74 r/w Sec.76 of the Act. Therefore, I do not find strong substance in the objections raised by the respondents, so as to deny the right of the present respondents to prefer revision against the orders passed by the tribunals below on the ground of locus-standi. With these observations, I hold that there is sufficient evidence on record to substantiate that the present applicants being "aggrieved persons" with the orders passed by the tribunals below have got every right to invoke the remedy of appeal / revision / review, as the case may be. With these observations, I answer the 'Point No.1 in affirmative.

9. **Point No.2,3&4:** While challenging the judgment & order passed by the tribunals below, the revision petitioners have raised the core issue of jurisdictional error committed by the tribunals below in the light of plain provisions contended in Sec.88(B) of the Act. By relying upon certain factual aspects which are not seriously disputed, the Ld.advocate for the petitioners strongly submitted that the fact of appointment of Receiver by the Hon'ble High Court, in the suit pending before them and the nature of custodia legacy or management of the disputed land with the Court Receiver is amply established and proved on record. For that purpose as a fact on record, at first I may quote the say submitted by the Court Receiver in the present revision application No.2/2018, dt.8/2/2018. The relevant averments made in the outward letter No.2412/18 by the Court Receiver runs as under :

*"In this connection this is to inform you that in pursuance to the courts' order dt.23/11/1954 passed by Hon'ble High Court at Bombay, the Court Receiver, Hon'ble High Court, is appointed as Receiver of the suit properties situated at suit lands bearing S.No.58/3 (at present Gat No.265), 53/1, 117/1 (at present Gat No.267), 54,55,59/2, 64/2, 118, 119 (at present Gat No.266), 96/3, 96/4 (at present Gat No.543) of Village Koregaon Mul, Tal.Haveli, Dist.Pune. **The Court Receiver took possession of Gat No.265 & 267 on 12/3/1956, since then the same are custodia legacy and still in possession of Court Receiver ."***

10. Whether the Court Receiver has taken actual possession of the suit property or whether he has submitted the report of compliance to the Hon'ble High Court, about the symbolical possession taken by him, is the matter of

different issue, but, suffice to say that the fact of pendency of */is*, appointment of Court Receiver in respect of the disputed property and vesting of the management of the disputed property since then till this date has been amply proved on record. In that context, I would like to quote the relevant provisions of Sec.88(B) for ready reference as under-

Section 88(B)(1) Nothing in forgoing provisions except sections 3, 4B, 8,9,9A,9B,9C,10,10A,11,13 & 27 and the provisions of Chapters-VI & VIII in so far as the provisions of the said Chapters are applicable to any of the matters referred to in the sections mentioned above, shall apply--

- (a) -----
- (b) -----
 - (i)-----
 - (ii)-----
- (c) -----
- (d) to lands taken under management temporarily by the Civil, Revenue or Criminal Courts by themselves, or through receivers appointed by them, till the decision of the title of rightful holders:

Provided that, from the date on which the land referred to in clause (d) is released from management, all the foregoing provisions of this Act shall apply thereto; but subject to the notifications that in the case of tenancy, not being a permanent tenancy, which on that date subsists in the land,

(i) the landlord shall be entitled to terminate the tenancy under section 31 (or under section 33B in the case of a certificated landlord) within one year from such date; and

(ii) within one year from the expiry of the period during which the landlord or certificated landlord is entitled to terminate the tenancy as aforesaid, the tenant shall have the right to purchase the land under section 32 (or under section 33-C in the case of an excluded tenant);and

(iii) the provisions of sections 31 to 31-D, (both inclusive) (or sections 33-A and 33-B in the case of a certificated landlord and sections 32 to 32-R, (both inclusive) for sections 33A and 33-C in the case of an excluded tenant) shall, so far as may be applicable, apply to the termination of a tenancy or the right to purchase the land, as aforesaid;

11. The above quoted provisions of the section, amply suggests that once the fact is established, that the property is under the management of Court Receiver, then the provisions of Sec.88(B) shall come into play. Plain reading of Sec.88(B)(d) r/w Proviso attached thereto makes it crystal clear that pending the */is* and till the property being released from the management of Court Receiver, the application of Sec.32 to 32R kept in abeyance. In my humble opinion the simple analogical reading of Sec.88B amply suggests that

pending such legal dis-ability the right of tenants if any kept in abeyance, but, never stands extinguished, but, kept alive subject to the Proviso attached to this Section. In continuation thereof, suffice to say that as per the Proviso attached to Sec.88B since from the date of release of the property from the court management, all provisions of Tenancy Act, shall come into play, so as to protect the rights vested with the tenant in possession, as well as the landlord as the case may be which are covered by the provisions of (i)(ii)(iii) made under the provisions of Sec.88B(d).

12. At this juncture Ld.advocate for the respondents called my attention towards the precedent laid down by our Hon'ble High Court, in the case of ***Sureshchandra Prakashchandra / Anandrao Thobade, 2005(2) MhLJ-704***. After going through the judgment of the Ld.appellate tribunal, it also amply suggests that while deciding the matter at hand the Ld.appellate tribunal has followed the Law laid down by our Hon'ble High Court, in the said precedent and come to the conclusion that the applicability of the provisions of Sec.32 to 32R is not affected merely by appointment of Court Receiver.

13. I have gone through the above precedent very carefully. After digesting the Law enunciated therein, I may quote the relevant facts and law enunciated therein in substance as under :

In the case referred supra, "disputed land which was in possession of the tenant and under the management of Court through Court Receiver, over which one of the party was asserting tenancy rights since prior to 1/4/1957. In the passage to time the Receiver has handed over the possession of the suit land to the petitioners. Subsequent thereto the tenant being failed to invoke the remedy as per the Proviso attached to Sec.88B(d), the landlord has presented the Petition seeking possession on two grounds (i) that the tenant has exceeded his holding than ceiling limits and, (ii) the tenant has failed to exercise the right within one year from the land has been released from the Court management.

In those context, the Hon'ble High Court, has ruled that the rights of tenants cannot be extinguished.

14. However, the facts of the present case at hand are quite distinct and not identical at all, to the case at hand. On the contrary, herein this case, appointment of Court Receiver, vesting of property in the court management and role of the Court Receiver as custodia legacy, is still in force. This fact is not only admitted, but, duly proved by documentary evidence. For that purpose suffice to say that the Receiver had filed application u/s 84 of the Act, against the present respondents for summary eviction which came to be dismissed. The Court Receiver then preferred revision application No.6/80 which also came to be dismissed and these events are duly established on record. Thus, the Court Receiver though not found in actual physical

possession his role as custodia legacy, which has been contested by the present respondents in earlier proceedings u/s 84 of the Act, has amply proved that the status of the disputed property as a custodia legacy in form of court management, since prior to the inception of the tenancy dispute is not only proved, but, admitted by the respondents themselves. Therefore, by keeping reliance on all these documentary evidence placed on record, with utmost humbleness I may say, that the proposition of law laid down in the above precedent, relied by the Ld.advocate for the respondents is not strictly applicable to the case at hand.

15. On the contrary, the precedent having identical facts and circumstances of the case just like the case at hand, in the case of ***His Holiness Shrimat Sudhindra Thirth Swamiji of Samsthan Kashi Math / Veekaylal Investment Co.P.Ltd., 1988 BCR(4)-436***, certainly guides me to interpret the provisions of Sec.88(B)(d) in its true spirit and its effect to the subject matter of the present revision application. At first, while examining the identity of the fact and circumstances of the case referred supra, I may quote here that in the said *lis*, after the death of landlord, Administration Suit No.3415/1947 was filed before the Hon'ble High Court, by his LRs. The suit was pending wherein Receiver was appointed. The Receiver had sold the part of these property to one Pvt.Ltd.Company. However, sale certificate was not issued by the Court Receiver. Pending all these *lis*, one Mr.Bhatia Raval raised tenancy dispute u/s 76(b) r/w 32G of the Act, and thereby succeeded in obtaining certain orders in his favour. Subsequent thereto, the purchaser through the Court Receiver challenged the orders passed by the tribunals below by invoking the remedy of appeal at belated stage. The Ld.appellate tribunal without condoning the delay recorded the finding that the subject matter being covered u/s 88B(d) orders passed by the tribunals below, are void and remanded the matter to ALT. While setting aside the order of remand the Hon'ble High Court, has ruled as under.

"Whether because of the Receiver appointed in a Administration Suit, the land which is the subject matter of the suit would come out of the purview of the relevant provisions of Tenancy Act or not will have to be agitated by the parties in the suit, which is already pending in this Court. Whether the provisions of Sec.32 to 32R of the Tenancy Act applied to the suit land in view of the admitted fact that the property was in the possession of the Receiver at the relevant time and whether the provisions from section 1 to section 88-B (excepting section 4, 4-A, 4-B, 8, 9, 9-A, 9-B, 9-C, 10, 10-A, 11, 13 & 27 and the provisions of Chapters 6 & 8) of the Bombay Tenancy Act in general applied to the suit land. If they applied, a declaration under section 70(b) and the order passed in the proceedings under section 32-G of the Tenancy Act would be deemed to have been given by a Court of competent jurisdiction. If not, they would be deemed to have been given by the

Court having no jurisdiction to give those decisions and to pass those orders."

16. I have gone through the above precedents very carefully. After digesting the Law enunciated therein, I am of the opinion that the principle of law laid down therein certainly guides me to hold herein this case also when the fact of custodia legacy and management of the disputed land with the Court Receiver is established the provisions of Sec.32 to 32R are not at all applicable till the land has been released from the order of custodia legacy. At the most after the release of the property Proviso attached to Sec.88B of the Act, shall come into play, so as to initiate the proper proceedings at proper time and not till the property is released from the custodia legacy. In short, once the management of the disputed land with the Court Receiver is proved since prior to the filing of the proceedings by the tenant u/s 32(O) of the Act, or other relevant provisions in the year 1971, then the proceedings conducted and orders passed therein by the tribunals below by ignoring the mandate of Sec.88(B)(d) of the Act, which are strictly applicable to the disputed land, are without jurisdiction.

17. In the given set of facts, I do find that the Ld.appellate tribunal has committed error of jurisdiction while passing the order by allowing the appeal and setting aside the order of ALT in respect of the confirmation of order u/s 32G and issuance of 32M certificate in favour of the tenant, whose status as tenant, right of statutory purchase, has not reached to its findings.

18. In the given set of facts, once when the right of present respondents u/s 32G has kept in abeyance till the property being released from the custodia legacy, no title has been conferred in his favour either to have a ownership on the strength of certificate u/s 32M nor he has a statutory right to create third party interest in the subject matter, particularly pending the /s before the Hon'ble High Court. Suffice to say that till the effect of custodia legacy and effect of court management over the subject matter in dispute is not released, the tribunals below have no statutory jurisdiction to invoke either the provisions u/s 32G, 32M or even to invoke the provisions of Sec.43 of the Act, for granting permission under the Act. Suffice to say that inview of the above facts enunciated supra, the tribunals below have committed error of jurisdiction and orders passed in all these three revision applications does not sustain in eye of Law. Therefore, I am of the view this is the fit case where this Tribunal shall invoke its revisional jurisdiction u/s 76(a) of the Act, to correct the error of law committed by the tribunals below by allowing the revision in its perspective orders. With these observations, I answer the 'Point No.2, 3 & 4 accordingly' and proceed to pass the following order.

ORDER

Revision application No.P/I/3/2018 is hereby allowed and order under revision thereby is hereby set aside.

Revision application No.P/I/2/2018 & P/I/1/2018 are also hereby allowed & the permission u/s 43 of the Act, granted by the tribunal below in favour of the tenant is hereby set aside.

Original judgment be kept in proceeding No.3/2018 & certified copy of the same be annexed with other two revision applications.

No order as to costs.

R&P received from the respective tribunals be sent back immediately.

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