

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

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

No.53/B/2001/P

Smt.Shahubai Sadashiv Shinde
D/H—Shri.Balasaheb Sadashiv Shinde & otr.1
R/o.Induri, Tal.Mawal, Dist.Pune.

.....Applicants

VS.

Shri.Baban Namdeo Thakar & otrs.,
R/o.Jambawade, Tal.Mawal, Dist.Pune.

.....Respondents

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

Appearance :- Adv. Shri J.P.Dhaytadak for Revision Applicants.
Adv. Shri B.B.Bhargude for Respondents

DATE:- 17th OCTOBER, 2018

JUDGMENT

Being aggrieved by the judgment & order passed by Ld.appellate tribunal i.e. Sub-Divisional Officer, Mawal Sub Dn.Pune (hereinafter referred as the "appellate tribunal") in file No.RTS/A/31/97, dt.30/11/2000, the aggrieved vendor 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.Mande was the original owner of the entire disputed land Gat No.27 adm.5H 65R. One Sadashiv Shinde was claiming the tenancy rights in the said land as per the provisions of the Act. The landlord and tenant by their private negotiation effected the transfer of disputed land in favour of wife of tenant **Shahubai** on 30/11/1970. As such Shahubai Shinde became the absolute owner of the suit land on the strength of sale-deed dt.30/11/1970. Thereafter, Shahubai sold the disputed land to the father of the present applicant on 7/6/1972. After the certification of entry based on sale-deed dt.7/6/72, the Government has started the proceedings u/s 84C of the Act, stating that the transfer has been effected in the name of father of the

applicant, who was not agriculturists within the meaning of Sec.63 of the Act, and still then transfer came to be effected without permission through the competent authority constituted under the Act. In the first round of litigation, by order dt.28/4/78 the transfer dt.7/6/72 declared illegal being in contravention of Sec.63 of the Act, and land was forfeited to the Government and effect thereof has been given in revenue record by entering the name of Government in the column of occupancy. Thereafter, after the lapse of time for more than 10 years the aggrieved purchaser has preferred tenancy appeal No.64/88, which came to be decided on 30/9/93, whereby, the Ld.appellate tribunal has remanded the matter for re-trial to ALT, so as to verify, as to whether the purchaser was the agriculturists or not? on the date of purchase. After the remand the proceedings came to be re-registered as file No.84C/SR/4/97. ALT has decided the same by judgment & order dt.24/4/97, holding the transfer in contravention of the Act, being executed without permission accorded through the competent authority. Again in the second round of litigation the aggrieved purchaser has preferred tenancy appeal No.31/97, which came to be decided by order dt.30/11/2000, whereby, the Ld.appellate tribunal has come to the conclusion that the transfer being effected in favour of the agriculturist, no bar is affected to the disputed transaction and recorded the findings, that the transfer is valid.

3. Being aggrieved by the said judgment & order the aggrieved transferor / seller of the disputed transaction preferred the present revision application on the grounds more particularly set out in the revision application.

4. After the receipt of the R&P from both the tribunals below, sufficient opportunity was given to both the parties through their respective advocates for their respective submissions. Heard Ld.Adv.Shri.J.P.Dhaytadak for the revision petitioners & Ld.Adv.Shri.B.B.Bhargude for the respondents. After perusing R&P received from both the tribunals below and after considering the submissions made by respective advocates at length following facts become evident.

5. Parties have not disputed the fact, that the transfer dt.7/6/72 made by Shahubai, in favour of the father of the applicant was without permission u/s 63 of the Act. The only issue raised against it was that the purchaser was not the agriculturists within the meaning of u/s 63 of the Act. On this touchstone, Ld.Adv.Shri.Dhaytadak, has raised two points i.e. the appeal proceedings were affected by non-joinder of necessary parties and the State was not joined as a party to the proceedings. Secondly, Ld.advocate for the petitioner 4strongly submitted that, there is no '*iota of evidence*' on record to get the support of findings recorded by Ld.appellate tribunal while upholding the transfer legal. On these counts the revision petitioners have prayed to allow the same and to set aside the order passed by the Ld.appellate tribunal.

6. As against this, Ld.Adv.Shri.B.B.Bhargude, for the respondents submitted that the present revision petitioner / transferor has no locus-standi to invoke the remedy of revision and to challenge the order passed by the Ld.appellate tribunal. In addition thereto, Ld.Adv.Bhargude strongly submitted

that the proceedings initiated by lower tribunal as against transfer dt.7/6/72 initiated in 1976 hopelessly time barred and therefore, action taken by the authorities does not sustain in eye of Law. While challenging the locus-standi of present revision petitioners ld.advocate for the respondent kept his reliance on following precedents.

(i) *Shree Vyankatesh Housing Society v. Ramchandra, 1986 MhLJ-421*

(ii) *Vitthal Kulkarni / Tarabai Patil, 2003(1) MhLJ-342*

After considering the R&P from both the tribunals, submissions made by respective advocates and precedents relied by the advocate for the respondents 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 revision petitioner has locus-standi to contest or challenge the order passed by the tribunals below u/s 84C of the Act?	Negative
2.	Whether the judgment & order passed by the Ld.appellate tribunal is proper, correct and legal one?	Affirmative
3.	Whether the judgment & order under revision calls for interference therein through this Tribunal within its limited revisional jurisdiction?	Negative

Reasons

7. Point No.1: Ld.advocate for the respondents strongly argued that the present revision petitioner being the transferor / vendor, who has executed the sale-deed in dispute in favour of the present respondents have no locus-standi either to impeach or challenge the orders passed by the tribunals below. In support of his submissions Ld.Adv.Shri.B.B.Bhargude, kept his reliance on the precedent laid down by our Hon'ble High Court, in the case of ***Shree Vyankatesh Housing Society v. Ramchandra, 1986 MhLJ-421.*** I have gone through the above precedents very carefully. While deciding the scope of intervention by the landlord to the proceedings initiated by the tenant u/s 43, the Hon'ble High Court, has ruled as under :

"The phrase "any person interested" in such land used in Sec.84C ex-landlord could not raise objection being interested person in the property, no such provision is pointed out by which the ex-landlord could raise objection being interested in the property. Therefore, ex-owner had no locus-standi to intervene in the matter and create impediment in the affairs of the property in the hands of statutory purchaser".

8. I have gone through the above precedent very carefully and do find that, in the case referred supra, Hon'ble High Court, was dealing with the status of the statutory owner as against the landlord. Herein this case, as the transfer is made by the owner, same issue arises in the present matter, so as to find out the locus-standi with the ex-owner to intervene the proceedings u/s 84C of the Act. In view of Law laid down by our Hon'ble High Court, in the above case, I am of the view that the principle of Law is equally applicable to the case at hand, so as to come at conclusion that ex-owner of the land has no locus-standi to intervene the proceedings u/s 84C of the Act, initiated either by the Mamlatdar suo-moto or the persons interested in the property. The simple analogy behind it is, that soon after the transfer is effected, the ex-owner has no interest remains with him to participate in the further proceedings or to appear in such proceedings as a person interested. Furthermore, even after the sale has been declared illegal as per u/s 84C of the Act, the ex-owner has no interest in the property even at the time of distribution as ex-owner has no place in the priority list maintained u/s 32P of the Act. In view of the Law laid down in the above precedent, I hold that same is equally applicable to the case at hand and come to the conclusion, that the present revision petitioner being ex-owner of the property, has no locus-standi to impeach the transfer as "interested person" u/s 84(C) of the Act. Therefore, I answer the 'Point No.1 in Negative'

9. Point No.2&3: Now, while considering the legality of the transfer in dispute the ground on which the tribunal has invoked the powers u/s 84C of the Act, that the purchaser was not the agriculturists within the meaning of the Act. After perusing the disputed sale-deed and the statement made by the ex-owner, as well as purchasers it has become evident that, the respondents have specifically contended that, they are the agriculturists by profession. The Legislatures in their wisdom has not considered only agriculturists, but, also considered the "agricultural labour" to purchase the agricultural property without intervention of the authorities. Herein this case, prior to the disputed sale-deed the name of the present respondents are appearing in the column of cultivation. The said entry stands in the column of cultivation since prior to 1969 onwards. At the material time the Rules made under the provisions of Maharashtra Land Revenue Record of Rights and Registers (Preparation and Maintenance) Rules, 1971, were not in force and therefore, as a practice followed by the Revenue Deptt. at the initial stage, the name of the person in possession was ever entered in the column of cultivation in 'Pencil' and in the passage of time same used to be rectified by 'Ink', by certification thereof by the competent revenue authorities. Herein this case, the name of purchaser prior to the disputed suit land was appearing in the column of cultivation in Pencil, that means he was found in possession as a person cultivating the land. In my view, this is sufficient evidence to record the finding that the purchaser was the agricultural labour atleast prior to the disputed sale-deed. In that context, the SDO has rightly held that the disputed sale-deed is not hit by the provisions of Sec.63 of the Act. Whether the purchaser was tenant or not? is not the issue before me. The issue was, whether he was indulged in the agricultural activities either the cultivator or as the agricultural labour

within the meaning of u/s 63 of the Act or not?, and Pencil entry to that effect is sufficient to record the finding, that the purchaser was the person having doing the activities of agricultural operation, either as cultivator or a labourer since prior to the disputed suit land. Therefore, same is not hit by the provisions of u/s 63 of the Act, and similarly on that line the proceedings u/s 84C of the Act, cannot be initiated against such transfer. This much observations are sufficient to upheld the transfer legal within the meaning of the Act.

10. Now, the legal issue which has been raised by the respondent is that of limitation. The plain reading of u/s 84C of the Act, nowhere contemplates the Rule of Law of limitation or as to initiate the proceedings for its forfeiture against the illegal transfers. However, Hon'ble Supreme Court as well as Hon'ble High Court, has ruled that in such eventualities the powers given u/s 84C of the Act, should have been used by the authority within a '*reasonable time*' and in that context even the delay of 9 months is also considered as bar to invoke the powers u/s 84C of the Act. In support of above observations, Ld.Adv.Shri.Bhargude, has rightly kept his reliance in the case of *Mohamad Kavi Vs. Fatimabai Ibrahim, reported in 1997 (6) SCC-71*, wherein Their Lordships have ruled as under :

"The provisions of Sec.84-C itself says that the power under the aforesaid section should be exercised within a reasonable time. Where no time limit is prescribed for exercise of a power under a statute it does not mean that it can be exercised at any time; such power has to be exercised within a reasonable time".

11. I have gone through the above precedent very carefully. Herein this case also the proceedings u/s 84C of the Act, initiated against the disputed transfer 4 years after the actual transfer being effected and certified in the revenue record. Therefore, the proposition of Law laid down therein is perfectly applicable to the case at hand, so as to come at the conclusion that the proceedings initiated by revenue authorities after 4 years from the disputed transaction being not initiated within '*reasonable time*' does not sustain in eye of Law. On this touchtone also, order of ALT does not sustain in eye of Law. Ld.appellate tribunal has rightly corrected the said illegality committed by ALT within his jurisdiction. Therefore, judgment & order of Ld.appellate tribunal does not call for interference by this Tribunal. With these observations, I answer the 'Point No.2&3 accordingly'.

12. Now, in view of negative finding of Point No.1, it has become crystal clear that it is the ex-owner who has dragged the purchaser before this Tribunal without justification and role played by him as intervener is also not sustainable in eye of Law. The mental harassment caused to the respondent should have to be compensated in a monetary form. Therefore, in the given set of facts, I am of the view that this is the fit case, where the Tribunal shall invoke powers u/r 36 made under the Act, so as to impose the reasonable costs of Rs.5000/-, which shall be payable to the respondent. With these observations, I proceed to pass the following order.

ORDER

Revision application stands dismissed with costs.

The amount of costs is quantified for Rs.5000/-, which shall be paid to the respondent No.1 to 4 only within one month.

In the event the costs is not paid by the revision petitioner within stipulated period, the Mamlatdar shall recover the same as arrears of land revenue and be paid to the successful respondent No.1 to 4.

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

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