

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

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

No.TNC/REV/10/2003/NS

- | | | | |
|-----|--|------|------------|
| 1 | Shri Vijay Sham Ogale | | Applicants |
| | R/o – 477/2 SadharBazar, Satara. | | |
| 2 | Shri Vitthal Lakshiminarayan Lahoti (deceased through legal heirs) | | |
| 2A] | Shri Shrikant Vitthal Lahoti | | |
| 2B] | Shri Sagar Vitthal Lahoti | | |
| | Both R/o – Dhanalakshimi Building, Powai naka , Satara. | | |

VS.

- | | | | |
|-----|--|------|-------------|
| 1 | Shri Bhiku Namu Dhumal (deceased through legal heirs) | | Respondents |
| 1A] | Shri Balu Bhiku Dhumal | | |
| 1B] | Shri Prakesh Bhiku Dhumal | | |
| 2 | Shri Tanaji Namu Dhumal (deceased through legal heirs) | | |
| 2A | Mankabai Tanaji Dhumal | | |
| 2B | Rajendra Tanaji Dhumal No.1A to 2B Gadkar Ali, Satara. | | |
| 2C | Kalpana Mohan Mane R/o – 718,Suksagar, 5 Th floor, Rajabahu Desai Marg, Prbhadevi, Mumbai – 25. | | |
| 2D | Ujwala Jitendra Indalkar R/o – Karanje Terf, Satara. | | |
| 2E | Manjula Satish Bhosale R/o – Bavdhan,Tal – Wai, Dist – Satara. | | |
| 3 | Sou Suvarna Mahadev Dhotre R/o – Daulatnagar, Near Narmada School, Satara | | |
| 4 | Shri Shrirang Tanaji Duduskar R/o – Duduskarwadi, Po – Mahigaon, Tal – Jawali, Dist – Satara. | | |
| 5 | Shri Ganpat Ramchandra Kadam (deceased through legal heirs) | | |
| 5A] | Sou Anusaya Ganpatrao Kadam R/o – 41 Deshmukh Coloney, Satara | | |
| 5B] | Shri Bajirao Ganpatrao Kadam | | |

6 R/o – Mangalmurti, Sangamnagar,
Near Parekh Petrol Pump, Satara
Sou Maya Dattatraya Gaikwad
R/o – Morghar Tal – Jawali, Dist – Satara.

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

Appearance :- Adv. Shri V.B.Vidhate for Revision Applicants.
Adv. Shri A.C.Jadhav for Respondents

DATE:- 14th FEBRUARY, 2017

JUDGMENT

1. Being aggrieved by the judgment & order passed by the appellate tribunal i.e. Sub-Divisional Officer, Satara Sub Dn., Satara (hereinafter referred as the "SDO") in Tenancy Appeal No.25/95, dt.10/3/2003, the aggrieved Respondent has preferred the present revision application by invoking the provisions of Sec.76 of B.T.& A.L.Act, 1948 (hereinafter referred "the Act") before this Tribunal. Facts giving rise to the present revision application can be summarized as under.

2. The disputed land S.No.17/19 adm.25R. originally owned by Bhiku Namu Dhumal. He has agreed to sell the said property to Vijay Ogale under the registered agreement of sale bearing day-book No.2455/10-9-85. As the executant has failed to perform his part of contract, the purchaser constrained to file a Spl.Civil Suit No.11/87 against Bhiku Dhumal & otrs., After the receipt of suit summon the owner of the land / executant of the agreement of sale raised the plea before the Civil Court, that the Plaintiff is not an agriculturist and therefore, the disputed agreement of sale cannot be enforced against him for the relief of specific performance of contract. In short, by raising substantial issue of law under the Tenancy Act, it is the Defendant, who has constrained the Civil Court to frame the necessary issue, "as to whether the Plaintiff was / is the agriculturist within the meaning of the Act? By taking the note of plea raised, the Civil Court has referred the issue before the Ld.trial tribunal within the ambit of Sec.85A of the Act.

3. After the receipt of reference through Civil Court, so as to determine, "as to whether the Plaintiff in Spl.Civil Suit No.11/87 is / was the agriculturist at the material time or not?" Accordingly, proceedings were initiated before the ALT Satara. After giving proper opportunity of hearing the matter came to be decided before the ALT by order dt.6/7/95 in tenancy file No.85A/2/94. The tribunal come to the conclusion that, Plaintiffs / applicants are the agriculturist within the meaning of the Act.

4. Being aggrieved by the said judgment & order dt.6/7/95, the aggrieved Defendants / Opponents have preferred Tenancy Appeal before SDO Satara. The said matter again decided on merit in Tenancy Appeal No.25/95. While deciding the Tenancy Appeal, the Ld.appellate tribunal come to the conclusion that the reasonings recorded by ALT Satara are not sufficient to conclude the findings in favour of the Plaintiffs / applicants. So also the Ld.appellate tribunal come to the conclusion that, there is no sufficient evidence to prove the fact that the Plaintiff / applicant was ever agriculturist within the meaning of the Act. With the reasons so recorded the Ld.appellate tribunal allowed the appeal and set aside the order of ALT Satara, holding that the Plaintiff / applicant is not at all an agriculturist.

5. Being aggrieved by the said judgment & order the Plaintiffs / applicants have preferred the present revision application by invoking the provisions of Sec.76 of the Act, on the grounds more particularly set out in the revision application. The main ground raised by the Revision Petitioner is, that the appeal preferred by the aggrieved Defendants before the SDO was not at all maintainable and therefore, the judgment & order passed in Tenancy Appeal No.25/95 is perverse and without jurisdiction.

6. Heard Ld.Adv.Vidhate for the applicants and Ld.Adv.Jadhav for the Respondents. Perused the R&P from both the tribunals below. After considering the facts put forth and submissions made by respective advocates before this Tribunal at bar, 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 T.A.No.25/95 was ever appealable within the jurisdiction with the Ld.appellate tribunal and sustain in eye of law ? | Negative |
| 2. If not, what order ? | As per final order |

Reasons

7. **Point No.1 & 2:-** Herein this case, after perusing the record placed before this Tribunal on facts, it appears from the file of ALT Satara, that there is a certificate issued by SDO Satara in the name of applicant Vijay Ogale, certifying the fact, that Gat No.82/1 at Village Songaon Tarf Satara, stands in his name and as per Sec.63 of the Act, he had within the definition of agriculturist. 7/12 extract of Gat No.85/5A from Village Saidapur, Tal.Satara, was ever standing in the name of Vijay Ogale, which came to be deleted by M.E.No.1414. There is no "negative evidence", that the said deletion of name was ever took place prior to the disputed transaction between the parties to the suit bearing No.Spl.Civil Suit No.11/87. Thus on facts, there is sufficient evidence to establish the facts, that the applicant /

Plaintiff in the civil suit before the Civil Court, is the agriculturist within the meaning of Sec.63 of the Act.

8. Now, legal issue remains for my consideration so as to find out, "as to whether the judgment & order passed by the ALT, sustain in eye of law or not ?" At first, I may state here that, as per Sec.63 of the Act, transfer of agricultural land to non-agriculturist, is ever barred. Whenever such issue has been raised between the /is Mamlatdar is well empowered to decide such issue, "as to whether the particular person is the agriculturist or not, to satisfy the requirement of Sec.63, as per the provisions of Sec.70(a) of the said Act. In short the judgment & order passed by ALT Satara, while dealing with the reference through Civil Court, comes within the ambit of Sec.70(a) of the Act and nothing more. After perusing the entire provisions u/s 74(1)(a to w) and sub-section 2 of the said Section, it amply suggest, that the Statute has not provided the right of appeal against the order passed by the Mamlatdar u/s 70(a) of the Act. Our Hon.High Court has considered this issue, while deciding the *unreported case in Spl.Civil.Appln.No.2148 of 1956, dt.22/11/1956*. The certified copy of said judgment passed by Hon.Division Bench of our Hon.High Court, is placed on record by the applicant alongwith the list of document dt.30/1/2017. I have gone through the above precedent very carefully and do find that the principle laid down by our Hon.High Court, in the said judgment certainly guides me to find out the legal nicety involved in the matter. The legal preposition laid down by our Hon.High Court in the said precedent can be summarized as under :-

"There is no right which can be called an inherent right to make an appeal. The right to make an appeal is always the result of a statutory provision. Appeals that are competent under the Tenancy Act are provided by section 74 of the Act. It is obvious that no appeal lies u/s 74 if the decision in question has been recorded by the Mamlatdar u/s 70 sub-section (a) of the Act".

9. I have gone through the above precedent very carefully and do find that, herein this case, the reference was made by Civil Court u/s 85A of the Act to Mamlatdar to decide the issue, "as to whether the Plaintiff was / is the agriculturist within the meaning of Sec.63 of the Act or not?". That limited issue answered by ALT in affirmative. Inview of the settled preposition of law, there is no provision of appeal against such order, SDO was not ever competent to decide the same or even to set aside the order passed by the ALT by invoking powers u/s 74 of the Act. Thus, inview of the settled preposition of law, the judgment & order passed by Ld.appellate tribunal in Tenancy Appeal No.25/95 is without jurisdiction and ever bad-in-law, which does not sustain on the touchstone of legal preposition or the provisions made u/s 74 of the Act. With these observations, I answer Point No.1 'in negative' and find that the revision deserves to be allowed and to set aside the order of Ld.appellate tribunal and at the same time restore the judgment & order passed by ALT Satara. With these observations, I proceed to pass the following order.

ORDER

The revision application is allowed.

The judgment & order passed by the Ld.appellate tribunal i.e. SDO Satara in Tenancy Appeal No.25/95, dt.10/3/2003 is hereby set aside.

The judgment & order passed by the Ld.trial tribunal i.e. ALT Satara in tenancy file No.85A/2/94, dt.6/7/95 is hereby confirmed.

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.

The copy of judgment & order be sent to Civil Judge, Jr.Dn.,Satara, through whom the reference has been received to the tribunal, so as to proceed in the proceedings, if pending before it, according to law.