

**BEFORE THE DESIGNATED MEMBER, MAHARASHTRA REVENUE TRIBUNAL,
BENCH AT PUNE.**

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

No.NS/XI/2/2013

Begum Mard Musa Mulla,
R/o.Vaduj, Tal.Khatav, Dist.Satara.

.....Applicant

VS.

- 1) Shamrao Jagannath Godse,
- 2) Shri.Vishal Prabhakar Gheware,
Both R/o.Vaduj, Tal.Khatav, Dist.Satara.

.....Respondents

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

Appearance :- Adv. Shri B.B.Bhargude for Revision Applicant
Adv. Shri Godse for Respondent No.1
Respondent No.2 in person

DATE:- 2nd MARCH, 2019

JUDGMENT

Being aggrieved by the judgment & order passed by Ld.appellate tribunal i.e. Sub-Divisional Officer, Phaltan Sub Dn., Phaltan (hereinafter referred as the "appellate tribunal") in tenancy file No.Revision/23/2013, dt.14/8/2013, the aggrieved landlord has preferred the present revision application by invoking the provisions of Sec.76 of B.T.& A.L.Act, 1948 (hereinafter referred "the Act"), on the grounds more particularly set out in revision application.

2. Pending the revision third-party / opponent Shri.Vishal Gheware, moved an application to join him as a respondent in the revision application. The said application came to be allowed and he has been added as respondent No.2. However, despite of joining the respondent No.2 as a party to the petition since from the date of interim order in his favour, neither he himself or his advocate remained present throughout. Pending the revision respondent No.1 also remained absent. Therefore, heard Ld.Adv.Shri.B.B.Bhargude, for the petitioner after the receipt of record & proceedings from both the tribunals below. After considering submissions made by Ld.advocate representing the petitioner, it has become evident that,

the order under revision was challenged purely on the point of Law. Therefore, without giving much more importance to the absence of both the respondents and their advocates at the time of final arguments I have proceeded to decide the revision application in their absence on merit by invoking the powers u/r 19(1) made under the Code.

3. After considering the submissions made by Ld.Adv.Shri.B.B.Bhargude, for the petitioner and that too by perusing the R&P from both the tribunals below 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 file No.23/2013 is proper, legal, correct and within his jurisdiction?	Negative
2. If not, whether the said judgment & order calls for interference therein within the limited revisional jurisdiction of this Tribunal as per Sec.76 of the Act?	Yes, As per final order

Reasons

4. Point No.1&2 : Without giving much more **stress** to the facts and circumstances involved in the matter suffice to make it clear that the dispute between the parties is arising out of proceeding conducted before ALT Khatav (Vaduj) in tenancy file No.32(O)/Vaduj/SR/461/2011. The order passed by ALT dt.20/11/2012 was initially challenged before Ld.appellate tribunal by filing a Tenancy Appeal No.2/2013. The appeal came to be decided by order dt.15/7/2013 on merit, whereby, the Ld.appellate tribunal has set aside the impugned order. After passing the order in Tenancy Appeal No.2/2013, dt.15/7/2013, the same tribunal has initiated the proceedings at the instant of the respondent. The application moved by the original respondent treated as revision application No.23/2013. The petition came to be filed in form of revision without joining the original appellant as a party thereto. Not only that, but the said application came to be moved by invoking the provisions of Sec.76(1)(c) of the Act. Bare perusal of the judgment passed by the SDO in tenancy revision No.23/2013, it has become evident that, the present revision petitioner / who was the original appellant was not party to the proceeding in file No.tenancy/revision/23/2013. Therefore, question does not survive about issuance of notice and effective service thereof to the present revision petitioner as an interested party thereto. Tenancy revision No.23/2013, moved at the instant of present respondent No.1 was persay illegal and that too without joining the necessary party to the proceedings.

5. Secondly, it has become evident that, the SDO has committed error of Law and tried the proceedings within the revisional powers laid down in

Sec.76(1)(c) of the Act. Plain reading of this Section, amply suggests that this power can be invoked only by MRT, and not by SDO. This is the patent error at the face of record committed by the lower tribunal. I would like to mention here that this is not only the patent error, but amounts an intentional error committed by the authority passing the order due to ignorance of Law.

6. Thirdly, even otherwise the provision of Sec.76(A) of the Act, as applicable to the State of Maharashtra is considered, still then such limited revisional powers are vested with the Collector and if at all SDO find it necessary to invoke such powers as per the provisions applicable to the State of Maharashtra, the SDO has to use such powers with concurrence through the Collector and not *suo-moto*. For that purpose I would like to quote here the relevant provision of the Section itself which runs as under:-

Section 76(A)-

*Where no appeal has been filed within the period provided for it, the Collector may, **suo motu or on a reference made in this behalf by the Divisional Officer or the State Government, at any time,-***

7. The plain reading of said provision makes it crystal clear that as per the provision applicable to the State of Maharashtra, SDO has very limited powers of revision and i.e. subject to the concurrence given by the Collector and not *suo-moto*. Herein this case, there is no evidence to show that the SDO was aware of said provision and the scope of applicability of Sec.76(A) of the Act, at his hand. Suffice to say that Ld.appellate tribunal while interfering in the order passed by himself in Tenancy Appeal No.2/2013, dt.15/7/2013 by invoking the revisional powers u/s 76(1)(c) of the Act, has committed error of jurisdiction and that too only due to the ignorance of Law and nothing more. Suffice to say that the impugned order passed by the Ld.appellate tribunal and that too by invoking the revisional jurisdiction u/s 76(1)(c) of the Act, does not sustain in eye of Law and deserves to be interfered by this Tribunal, within its revisional powers u/s 76 of the Act. With these observations, I answer the 'Point No.1 in negative and Point No.2 in affirmative as per final order' and proceed to pass the following order.

ORDER

The revision application is hereby allowed.

The judgment & order passed by the SDO Phaltan in file No.Tnc/revn/23/2013, dt.14/8/2013 is hereby set aside.

The judgment & order passed by the SDO Phaltan in Tenancy Appeal No.2/2013, dt.15/7/2013 is hereby confirmed.

Certified copy of judgment with copies of judgment & orders passed by the SDO be sent to the Divisional Commissioner, Pune Division, with request to look into the matter personally and see that the authorities below performing the judicial acts should not commit such error of Law while dispensing the work of justice.

No order as to costs.

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

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