BEFORE THE MEMBER (JUDICIAL), MAHARASHTRA REVENUE TRIBUNAL, MUMBAI, ON DEPUTATION TO, MAHARASHTRA REVENUE TRIBUNAL, PUNE

No.TNC/REV/KP/150/89

Shri Appasaheb Virupaksha Tandale .... Applicant
of Vadgaon (Peth), Tal.Hatkanangale,
Dist.Kolhapur.

VS.

1) Shri.Baliram Govind Yadav .... Respondents
D/H---
1a)Shri.Vishwas Govind Yadav & otrs.,
1b) Ashok Govind Yadav
Both R/o. 1932, "A" Ward, Rankala Tower,
Kolhapur.

2) Shri.Pandurang Govind Yadav
D/H---
2a) Appasaheb Pandurang Yadav
2b) Balasaheb @ Shivaji Pandurang Yadav
Both R/o. 1441, "A" Ward, Sarnaik Galli,
Shivajinagar, Kolhapur.

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

Appearance :- Adv. Shri V.B.Mahajan for Revision Applicants.
Respondents absent though duly served

CORAM : Shri P.B.Sawant, Member (Judicial), M.R.T.

DATED:- 25th JANUARY, 2016

JUDGMENT

1. This revision has arisen out of a common judgment delivered by the Sub-Divisional Officer, Shahuwadi Sub Dn., Kolhapur, in Tenancy Appeal No.15/87 17/87, dt.16/3/88. The substance of the contentions is raised in the revision can be summarized as below :-

2. The land Block No.90 & 160 of Village Valoli, Tal.Panhala is owned by Shri.Appasaheb Tandale-present Applicant. The Opponents Yadav are the Tenants of the land, as the lands were leased to the

Opponents for the cultivation of sugarcane crop. By virtue of Sec.43(B) application came to be filed for fixation of reasonable rent of the suit land. The TAK Panhala fixed the reasonable rent at Rs.6379/- for the year 1985-86. Being aggrieved with the said order Applicant preferred the appeal No.17/87 which came to be dismissed. The said order impugned in this revision.

3. It is contended that the order is capricious, without considering the relevant factors. It is pointed out that the actual gross income of the suit land has not been calculated as enunciated u/s 43(B) of the B.T.& A.L.Act,1948. The charges which are required to be paid by the Tenants are not taken into consideration by the Ld.SDO. The view taken by the appellate court for taking into consideration only produce of the agricultural income out of similar land in the same locality was not proper or not considered. Out of total acres of the land 5 Acre of land was under cultivation of sugarcane. Therefore, whether the sugarcane has been cultivated alternatively. The Court should have considered the 10 acre of the area for fixation of reasonable rent.

4. Actual fact of cultivation and possession has not been taken into consideration and thereby, there is a miscarriage of justice. It is further pointed out that the suit land was covered u/s 43(A) of B.T.& A.L.Act,1948, then the prices and the income of Paddy, Chilli, Nagali etc., crop should not have been considered. Opponent No.2 was not made available for the cross-examination to the Petitioner, who has a real knowledge of the land and income therein. It is ultimate submission that it was incorrect to decide appeal No.15/87 & 17/87 by a common judgment. With these and other grounds there is error of law which has caused much prejudice to the Applicants. Thereby, it is prayed that the revision be allowed and order be set asided.

5. Opponents have supported the order of dismissal of appeal and prayed that the present revision is devoid of any substance. Hence prayed that revision be dismissed.

6. On going through the entire record and the text of the order passed by the tribunal below, short question arised for my determination :-

i) As to whether the order passed by the Ld.SDO suffers with legal deformity and thereby, requires to be interfered with ?

My finding to the above point is as below for the reasons stated thereunder :-

i) Yes

Reasons

7. It has to be bare in mind that the revision in respect of the judgment passed by the Ld.SDO bearing No.15/87 has already been decided. In the said appeal on the factual aspects are discussed in detail alongwith the findings given by the tribunal below. The considerations taken into consideration by the Ld.SDO refers to the point of quality of the land and the higher rate of yield accrued from the concerned land. In that process this Tribunal has held in the earlier revision, that the ratio is not properly considered. Thereby, the conclusions of less amount of rent came to be fixed which was ultimately revived by this Tribunal. So far as this particular revision is concerned, the finding of the Ld.SDO indicates towards the propositions u/s 43B, which lays down a provision for "reasonable rent" of land to which Sec.43A applies. Section-43A deals with *"the leases of land obtained by industrial or commercial undertakings, certain co-operative societies or for cultivation of sugarcane of fruits or flowers". To such category of land the provisions of Sec.43A as enunciated under sub-clause(1) shall not apply. Sub-clause-1(b) also specifies that,*

> *"The Sections enlisted below sub-sec.1 to sec.43A shall not apply to,*
>
> *"lease of land granted to any bodies or persons other than those mentioned in clause (a) for the cultivation of sugarcane or the growing of fruits or flowers or for the breeding of live stock"*

8. On the backdrop of this legal position Section 43B emphasizes the procedure to be followed for fixation of reasonable rent of land to which sec.43A applies. Sub-Section-3 to sec.43B lays down that, "regard is given to certain factors while determining the reasonable rent, which includes the profit of agricultural land in the similar locality, prices of particular crop for which the land was leased, improvements made in the said land by the lessee, assessment paid by in respect of the land, profits realized by the lessee on account of the lease of the land.

9. While reckoning the detail discussion on these points by the Ld.SDO in his elaborate judgment, it is clear that the Ld.SDO has looked into all the documents pertaining to the average yield, total income, expenditure vouchers and then referred to various citations which were put forth before him. For that reason this Tribunal does not require to re-iterate all these propositions by way of re-appraisal of evidence already been considered by the tribunal below.

10. While dismissing the appeal preferred by the Landlord Shri.Tandale, Ld.SDO has raised a question for himself by taking a recourse to the minute provisions u/s 43B for determining the rent. A proper acreage has been taken into consideration by this tribunal while deciding the appeal and so called Tenant Shri.Baliram Yadav etc., while deciding their appeal No.15/87. To avoid any of the points by way of repetition the only aspect which was considered by my earlier Judge is that of the category of land. The question posed by Ld.SDO is, as to why the TAK has fixed the rent at a higher level when the land is of Medium category. The Ld.SDO has referred to the oral evidence which I need not re-consider at the revisional stage, but, the fallacy of the contentions of Ld.SDO is within the aspect of the category of land only and exclusion of other aspects *viz* Education Cess paying on assessment of land and Irrigation Charges, Panchayat Cess etc., by the Tenants. This aspect though is cogent, it will not unnecessarily discard the basic finding of the TAK i.e. based on the Geographical situation. The crop of sugarcane needs heavy watering and the area of the land is adjacent to the riverside and also there is a Well in the land, by which the sugarcane crop has been watered.

11. It is necessary to re-iterate the observations of Ld.SDO for a proper perspective of the matter,

> "That the Tenants have reduced the area of sugarcane -- how long he can maintain it ? Moreover this rent fixation is not everlasting. It can be changed after every five years after application by the party within the meaning of sec.9(4) which gives powers to the Mamlatdar to reduce or enhanced the rent during any such period of five years."

12. In my opinion, if such is the view of the Ld.SDO, he himself has lost sight of the fact of the area and as well as Geographical situation. Besides, the fact that the sugarcane crop is being taken on every alternative year. It is true that the crop on alternate year should have been considered as per the submissions of the Landlord. In that case even though the Tenant's application as enunciated u/s 43B is considered and allowed. Even in that case also the annual rate should be more than that of the figure quoted by the TAK. The dismissal of the appeal of the Landlord therefore, was found not justified. The common judgment given by the Ld.SDO is devoid of any substance to the extent of giving proper and cogent reasons for dismissal of the appeal of the Landlord. I have found that this is a fit case wherein the order of the Ld.SDO needs an interference. Therefore, I have given my finding to the point raised accordingly & pass the following order.

ORDER

The revision is partly allowed.

The common order passed by the Sub-Divisional Officer, Shahuwadi Sub Dn., Kolhapur, in Tenancy Appeal No.15/87 & 17/87, dt.16/3/1988 & the order passed by the TAK Panhala in T.C.No.30/85, dt.20/2/1987 is hereby quashed & set asided.

Yearly rent for the year 1985-86 onwards is fixed at Rs.10,000/- (Rs.Ten Thousand only). The Applicant is held to be entitle for recovery of the said rent at the above said rate.