

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

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

**No.P/V/3/2017**

Shri Shivaji Krishna Mali & otrs.2,  
R/o.Karve, Tal.Karad, Dist.Satara.  
.....Applicants

**VS.**

Shri Dhanaidevi & Jakaidevi Deosthan Trust,  
Karve, through Trustees-  
Shri.Dhanajirao Amarsinha Thorat & otrs.,  
R/o.Bhum, Tal.Bhum, Dist.Osmanabad.  
.....Respondents

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

Appearance :- Adv. Shri U.M.Shinde for Revision Applicants.  
Adv. Shri J.P.Dhaytadak for Respondents

**DATE:- 12<sup>th</sup> OCTOBER,  
2018**

**JUDGMENT**

Being aggrieved by the judgment & order passed by the Sub-Divisional Officer, Karad Sub Dn.,Karad (hereinafter referred as the "SDO") in tenancy file No.88/B/552016, dt.17/4/2017, the aggrieved tenant 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. Facts giving rise to the present revision application can be summarized as under.

2. Respondent No.1 in the present revision application is a Religious Charitable Trust, bearing registration No.NSA/1099 and registered as such under the provisions of Bombay Public Trust Act, by order dt.31/12/1954. The disputed property i.e. Gat No.188/6 adm. 28R and Gat No.384 adm. 2H 39R is the property stands in the name of the Trust as a Trust property recorded in PTR. The present revision petitioners claims tenancy right against the said property as tenant in possession since 1932 onwards through their forefathers. Initially the respondents have filed RCS No.127/1976 against the encroachers over the Trust property for the removal of the encroachment and possession thereof. That dispute after being hotly contested it was revealed that as the property being stands in the name of the Trust, the Trust has been added as a party to the suit in the array of the Plaintiff. Thereafter in view of the tenancy issue being raised by the present respondents in the said suit a ‘tenancy issue’ has been referred to the Tribunal i.e. ALT u/s 85A of the Act. The said reference as regards the relationship with the disputed land in between the Trust and the respondent has been decided upto MRT in favour of the present respondents as the tenant in possession. At present being aggrieved by the said decision recorded by the tribunals below, the aggrieved Trust has preferred Writ Petition No.7334/2016 before the Hon’ble High Court, and same is still pending.

3. Pending the dispute of the tenancy relationship between the parties thereto the Trust i.e. present petitioners have filed application dt.10/11/2015 before the Collector, Satara, which has been registered before the SDO Karad, as file No.55/2016. The SDO after holding enquiry u/s 88B of the Act, come to the conclusion that the Trust is entitled for the exemption of the disputed property from the applicability of the provisions of Tenancy Act, and thereby, granted exemption certificate u/s 88B, as regards the disputed Gat No.188/6 and 384 as prayed for by order dt.17/4/2017.

4. Being aggrieved by the judgment & order granting the exemption of the disputed land in favour of the Trust, the aggrieved tenant has preferred the present revision application on the grounds more particularly set out in the revision application.

5. After the receipt of R&P from the office of SDO Karad, ample opportunity was given to the respective parties through their Ld.advocates. Heard Ld.Adv.Shri.U.M.Shinde, for the tenant / revision petitioner & Ld.Adv.Shri.J.P.Dhaytadak for the Trust / respondents. After considering the facts put forth, and submissions made by respective advocates in support of their rival contentions before this Tribunal, following points arise for my determination. I have recorded my findings with reasons thereon as under :-

<u><b>Points</b></u>	<u><b>Findings</b></u>
1. Whether the order passed by the tribunal below / SDO Karad, granting exemption certificate u/s 88B of the Act, in respect of the disputed lands in favour of the Trust, is legal, proper and sustainable as a whole?	Partly affirmative for land Gat No.188/6 (new) and negative for land Gat No.384.
2. If not, whether the judgment & order passed by the tribunals below calls for interference therein through this Tribunal within its limited revisional jurisdiction? And if yes, upto what extent?	Yes, as per final order.

### **Reasons**

**6. Point No.1&2:** After perusing the record from Ld.trial tribunal, it has been amply proved that after the Trust has moved the proceedings through file No.55/2016 for grant of exemption u/s 88B of the Act, effective lawful notice was issued to the tenant in possession. Tenants have contested the proceedings by filing detail say dt.29/7/2016. The tenant has contested the proceedings on all available grounds with them to raise the issues regarding limitation, jurisdiction, bonafides of the Trust etc. While re-appreciating the said aspect, it has become evident that, the revision petitioners though in possession of the suit property since prior to 1940, the tenancy dispute which has been raised in RCS No.127/76 has been decided in favour of the tenants upto MRT and Writ Petition against the said findings, at present under challenge before the Hon'ble High

Court, at the instance of the Trust. In that context, so far as the scope of enquiry to the extent of disputed matter involved in the present proceedings, the respondent / Trust has moved separate application dt.9/1/2018 before this Tribunal, and thereby, positively made a statement in the proceedings through the said application, that they have withdrawn their defenses as against the status of the present revision petitioners as the tenant in possession, particularly to the extent of disputed land, for which certificate u/s 88B of the Act, has been asked for. The relevant judicial admissions given in pursis dt.9/1/2018 runs as under:

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These admissions given in the proceedings by the Trust, coupled with the findings recorded by the tribunal in the reference proceedings has reached to its finality as regards the present revision petitioners. The respondents have not disputed said findings as same are recorded in their favour. Therefore, no issue remains for consideration as to the status of the present petitioners as the tenant in possession, particularly to the extent of disputed matter in the present proceedings.

7. At this juncture while contesting the proceedings u/s 88B of the Act, the Ld.advocate for the petitioners / tenant, at first juncture tried to make out the submissions, that the disputed property is the subject matter governed by the provisions of Bombay Hereditary Offices Act, 1984. Therefore, the property stands vest in the Government and unless the Government has been joined as a party to the proceedings, neither the nature of the property can be converted into Trust property, nor it can be the subject matter of exemption u/s 88B of the Act. I do not find strong substance in this submissions. It is evident on record that no documentary evidence has been placed on record to establish the nature of the property as a property belongs to Hereditary Office and Watan was granted to the particular person by way of remuneration for the services rendered by them to the Deity. If this type of evidence is not placed on record, applicability of the provisions of Bombay Hereditary Offices Act, 1984, does not survive. In support of above observations I may keep reliance on the precedent laid down by our Hon'ble Supreme Court, in the case of **Bhalchandra Patil / Vishwanath Patil, AIR 1957-SC-34(FB)**. The

proposition of law laid down in these precedents can be summarized as under-

*“From the definitions given in the Act, it is necessary that there should be a Hereditary Office, and Watan property which is assigned to Watandar was assigned by way of remuneration from the performance of the duties pertaining to such office. If there is no evidence as to the original Character of the grant or as how and when the grant was resumed, the Act will not be applicable. The land had ceased to the Character of Watan and shall subject to the ordinary Law of ordinary tenures in that State as the Government has power to destroy the Watan or watan land on the principles that, authority who has the power to create the office has also power to revoke the same. The person who acquires watan property without acquiring the office is not the Watandar under the provisions of this Act.”*

I have gone through the above precedent very carefully and do find that, proposition of law laid down therein strictly and perfectly applicable to the case at hand, so as to come at a conclusion that no part of the disputed land comes under the provisions of Bombay Hereditary Offices Act, and submissions to that effect by the Ld.advocate for the revision petitioners stands failed.

8. Now, while considering the legality of grant of exemption certificate issued by the tribunal below, I have to keep in mind the main requirement u/s 88B of the Act, which are strictly applicable to the Charitable Trusts and the mandate of requirement of certificate under the Act. It is well settled principle of law, that in order to have a relief under this Section, the Trust has to establish (i) that the Trust was in existence prior to 1/4/1957 and the property was standing in the name of Trust as a Trust Property to the record of PTR prior to 1/4/1957, (ii) While granting the exemption certificate Trust has to establish that **the income from the property would be used for the object of the Trust.**

9. If above two requirements are prima-facie established, then and then, the power used by the tribunal below presumed to be proper and correct. On this touchstone, so far as the nature of the disputed property as a property entered in PTR prior to 1/4/1957 and registration of the Trust prior to 1/4/1957 is not at all in dispute. Insertion of the disputed property in the record of PTR (Bombay Public Trust Act) has reached to its finality and nowhere objected by the revision petitioners at any point of time. Therefore, same cannot be re-agitated before this Tribunal. The

petitioners have tried to become trustee, but, that litigation has gone against him before Hon'ble High Court. By sufficient documents on record coupled by admission of the petitioners it has been proved that the disputed land is Class-III Inam Land.

10. Now, So far as the S.No.269/6 (new Gat No.188/6) 0-28 R. concerned, none of the parties have disputed the fact that the land is the Trust property and same is in possession of the present respondent as the tenant in possession. In addition thereto, the Ld.advocate for the revision petitioner has not disputed the location of the site of Gat No.188/6 within the vicinity of the Temple of Deity Dhanaidevi. In that context, the very purpose which has put forth by the advocate for the respondent, amply suggests that so as to control the crowd during the period of annual procession, yatra +& other activities of the Trust, requirement of the disputed Gat No.188/6 has become necessity for the Trust object, so as to avoid un-natural calamities due to the heavy crowd, the land Gat No.188/6 is required for the Trust object so as to carry out the necessary developments therein. The object behind it is to avoid further un-natural calamities which had ever took place in past. In that context, after the certification u/s 88B of the Act, in respect of the Gat No.188/6, whether income therefrom will be available or not? or whether such income would be used for Trust purpose or not? will not remains for consideration. It is well settled principle of law, that in such eventualities whether the income is available and whether such income will be used for the Trust becomes redundant. In support of above observations I may keep reliance on the precedent laid down by our Hon'ble High Court, in the case of **Anand Yewle / Shaikh**, 2005 MhLJ(2)-813, wherein Hon'ble High Court, has ruled as under:

*“It does not mean that if no income is derived by the Trust from the suit lands, benefit of Sec.88B will not be available.”*

I have gone through the above precedents very carefully and do find that, herein this case also even though the disputed S.No.188/6 (new) though not likely to derive income after obtaining certificate u/s 88B of the Act, still then if the property is likely to be used for the Trust purpose, income therefrom and its use for the Trust becomes redundant. In short, the Trust has established its bonafides for the claim u/s 88B of the Act, for Gat No.188/6.

11. Now the question remains for the bonafides for the claim of exemption for land Gat No.384. While examining the bonafides of the Trust for claiming exemption in respect of Gat No.384 it has been amply

proved on record that the land Gat No.384 is not within the vicinity of the Temple of all mighty Deity. The land is not ever required for the purpose of the Trust relating to the religious purposes for which the Trust has been established. The objects of the Trust are self-explanatory, which are only confined to the Puja-archa, Religious Annual Procession, Yatra etc. for the Deity alone and nothing more. After perusing the objects of the Trust mentioned in the Trust Register, it amply suggests that, Goshala or Go-sanvardhan is not ever recorded as the object of the Trust in the Trust record. On this touchtone, Ld.Adv.Shri.Dhaytadak fairly made a statement at bar, so as to insert “Goshala” as the object of the Trust proceedings are recently initiated and same are pending before the Trusts’ office. On this touchtone, it has been amply established that so far as the land S.No.384 adm. 2H 39R, no object has been established either before the tribunal below or even before this Tribunal to substantiate the second requirement of Sec.88B of the Act. Therefore, resolutions passed by Gramsabha dt.28/8/2018 being not consistent with the Trust object cannot be looked into as the documentary evidence in form of the Trust.

12. In short, as on today or particularly, on the date of filing of application u/s 88B of the Act, the Trust was not having Goshala or Panjarpol as its objects. Therefore, on that count exemption for Gat No.384 is not ever supportable. On this touchtone after going through the entire judgment & order passed by the SDO, it reveals to my mind, that the SDO has not considered this aspect, particularly in relation to the Gat No.384 if at all the exemption sought is not satisfying the second requirement as laid down in Sec.88B(ii) of the Act, the grant of certificate does not sustain in eye of Law. In support of above observations, I may keep reliance on the precedent laid down by our Hon’ble Supreme Court, in the case of **(1995) SCC-Supp.3 page-102 : Scale-1995(2)-480**, wherein Their Lordships have ruled as under:

*“The Trust has to establish before the Collector, that entire income derivable by the land, for which exemption is sought being appropriated for the purposes of the Trust, then and then, certificate can be granted otherwise not.”*

I have gone through the above precedents very carefully and do find that, the condition embodied in Sec.88B(b)(ii) of the Act, being not satisfied strictly grant of certificate u/s 88B of the Act, in respect of the Gat No.384 does not sustain in eye of Law.

13. In the given set of facts, objections raised by the Ld.advocate for the revision petitioners about the clause of Inam Land, applicability of the

Tenancy Act, to the disputed lands etc. do not find much more place while deciding the scope of enquiry contemplated u/s 88B of the Act. In support of his submissions Ld.advocate for the revision petitioners called my attention towards the following precedents.

- (i) Dattatraya / Hafiz, 2005(2) MhLJ-209
- (ii) Kondiba /Krishnarao, 2004(4) MhLJ-324
- (iii) Suhasini / Rambhaji, 2009(1) MhLJ-339

14. In view of the proved facts on record regarding the nature of the property, relations of the parties thereto and scope of enquiry contemplated u/s 88B of the Act, I am of the humble opinion, that the Law laid down in the above precedents being based on distinct set of facts, same is not applicable to the present case. With these observations, I answer the Point No.1 partly in affirmative to the extent of land Gat No.188/6 and partly in negative to the extent of Gat No.384. So also, I hold that in view of the finding of Point No.1 recorded supra, interference in the order passed by the tribunal below through this Tribunal within its limited revisional jurisdiction is necessary, as the grant of certificate in respect of the land Gat No.384 does not sustain in eye of Law and required to be set aside, accordingly, I answer the Point No.2 partly in affirmative and partly and negative as per final order and proceed to pass the following order.

### **ORDER**

Revision application is partly allowed.

(i) Grant of exemption certificate u/s 88B in respect of the land Gat No.188/6 (new) situated at Village Karve, Tal.Karad, is hereby confirmed and made absolute.

(ii) However, grant of certificate in respect of the land Gat No.384 situated at Village Karve, Tal.Karad, u/s 88B stands cancelled.