

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

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

**Revision No.SH/III/1/2013**

- 1) Smt.Sushila Hari Yadav  
R/o.Bhutaste, Tal.Madha, Dist.Solapur.
- 2) Smt.Suman Vishnu Surve  
Through—POA Shri.Janardan Sukhdeo Patil,  
R/o.Kurduwadi, Tal.Madha, Dist.Solapur. .... Applicants

**VS.**

- Smt.Mathubai Bapuchand Shaha  
D/H—Hirachand Bapuchand Shaha  
D/H—
- 1)Shri.Padmakumar Hirachand Shaha  
R/o.Satyashri Vividh Vastu Bhandar,  
Near Uttam Mangal Karyalaya, Shop No.6,  
Somwar Bajar, Malegaon Camp, Dist.Nasik
- 2) Shri.Parshwakumar Hirachand Shaha  
3) Shri.Chandrakant Hirachand Shaha  
4) Smt.Rohini Pravin Shaha  
5) Smt.Namrata Nitin Shaha  
6) Smt.Sapna Shirish Shaha  
No.2 to 5 through POA—Ajitkumar Motichand Shaha
- 7) Shri.Madhukar Ramdas Patil  
8) Shri.Kalyan Ramdas Patil  
9) Shri.Ashok Ramdas Patil  
10) Shri.Ravishankar Ramdas Patil  
11) Vishnu Ramdas Patil  
12) Arun Ramdas Patil  
13) Smt.Nalini Gorakh Bagal  
D/H—Arvind Gorakh Bagal .... Respondents

**CLAIM :-** Revision Application U/s 76 of the M.T.& A.L.Act,1948 against  
the order u/s 32-M of the Act

**ALONGWITH Revision No.SH/IV/1/2013**

- 1) Smt.Sushila Hari Yadav  
R/o.Bhutaste, Tal.Madha, Dist.Solapur.
- 2) Smt.Suman Vishnu Surve

Through—POA Shri.Janardan Sukhdeo Patil,  
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**VS.**

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- 7) Shri.Madhukar Ramdas Patil
- 8) Shri.Kalyan Ramdas Patil  
D/H—a) Pratap Kalyanrao Patil  
b) Netaji Kalyanrao Patil
- 9) Shri.Ashok Ramdas Patil
- 10) Shri.Ravishankar Ramdas Patil
- 11) Vishnu Ramdas Patil
- 12) Arun Ramdas Patil
- 13) Smt.Nalini Gorakh Bagal  
D/H—Arvind Gorakh Bagal

.... Respondents

**CLAIM :-** Revision Application U/s 76 of the M.T.& A.L.Act,1948 against the order u/s 32-P of the Act

Appearance :- Adv. Shri Karanjkar for Revision Applicants.  
Adv. Shri S.B.Gujarathi for Respondents

**DATE:- 29<sup>th</sup> SEPTEMBER, 2016**

**COMMON JUDGMENT**

1. These two revisions are in respect of the same property and between the same parties thereto. The revision at Sr.No.1 is against the appellate order passed u/s 32-G and another revision is against the appellate order passed u/s 32-P of the Act. Therefore, decision passed in revision application against the order u/s 32-G is likely to affect to fate of the order passed u/s 32-P of the Act. Therefore, I do find that both the revisions are required to be decided by common judgment. Parties

hereinafter referred in the same sequence and chronology in which they were referred before the trial tribunal as the applicants or the respondents.

2. The facts either admitted or not seriously disputed amongst the parties to the petition can be summarized as under :-

The land Gat No.184/B adm.15 H. 98 R. and ½ share in well water situated in Gat No.185 at Village Padsali, Tal.Madha is the subject matter of the present revision application. The said property was originally owned by Hirachand Bapuchand Gujar. He died long before 1957. After his death widow Mathubai became the landlady, who died on 2/3/98. On the *Tillers Day* the landlady was widow. Furthermore, since prior to 1957 Ramdas Patil was the tenant in possession of the entire disputed property. Present applicants are the LR's of the original tenant, as on the date of *Tillers Day*. On the basis of facts put forth and documents placed on record this will not be out of way to mention here as a fact proved that during the lifetime of landlady / widow the tenant in possession have moved the proceedings u/s 32G of the Act. The said proceedings continued in file No.32-G/10/61. The said proceedings gone upto Hon.High Court by invoking the provisions of Appeal, Revision and Writ against the orders passed by the Tenancy Tribunal. However, fact is admitted and proved that the proceedings continued in the said file ended in favour of landlady as the same were continued and came to be decided while the landlady was under legal disability u/s 32-F of the Act.

3. On this background it is the case of the applicants that the landlady Mathubai died on 2/3/98 living behind the present respondents as her LR's. After the death of landlady the applicants have issued notice dt,14/1/99 so as to exercise their right to purchase the tenanted property after the removal of disability attached with the landlord and the said notice came to be issued to the LR's of the deceased landlady. After the service of notice the applicants have moved an application dt.21/6/99 and thereby initiated the proceedings for issuance of sale certificate u/s 32-G of the Act after determining the price of the land through the Tribunal. The said proceedings contested amongst the parties thereto and came to be decided by judgment & order passed by ALT dt.13/1/2011. The application has been partly allowed only to the extent of 7H. 14R. and sale has been declared ineffective for remaining land of 9H. 23R. After passing the judgment & order in file No.4/99 the tribunal has issued certificate u/s 32-M of the Act in favour of the applicants to the extent of 7H. 14R on 31/3/2011. Being aggrieved by the said judgment the applicant Nos.7 & 8 have preferred the appeal bearing No.6/2011 before the SDO Madha.

4. Pending the said appeal the landlord has moved an application for possession of the property in respect of which sale has been declared ineffective. The ALT has recorded the verification and one of the applicant Padmakumar Hirachand Shaha on 6/1/2012 in file No.4/99/P and proceeded with the hearing of the proceedings. After concluding the enquiry u/s 32-P based on verification recorded on 6/1/2012 ALT has pronounced his judgment & order in tenancy file No.4/99/P on 27/1/2012 and thereby, passed the order of eviction and possession

against the tenant for the land for which sale has been declared ineffective. Being aggrieved by subsequent judgment dt.27/1/2012 passed in tenancy file No.4/99 the appellants have preferred separate appeal bearing No.1/2012 before the SDO Madha and thereby, challenged the order of eviction and possession based u/s 32P of the Act.

5. Both the appeals have been decided by appellate tribunal i.e. SDO Madha through separate judgment. Appeal No.6/2011 came to be decided on 31/1/2013 and appeal No.1/2012 came to be decided by judgment & order dt.—/2/2013. Being aggrieved by dismissal of both appeals by the SDO Madha the aggrieved appellants / present Revision Petitioners have preferred the two separate revision applications before this Tribunal and thereby, challenged legality, correctness and propriety of the order passed by the trial as well as appellate tribunal on the grounds more particularly set out in respective revision applications.

6. Heard Adv.Karanjkar for the Revision Petitioners & Adv.S.B.Gujarathi for the respondents. Perused the record & proceedings received through trial tribunal as well as appellate tribunal. After considering the facts put forth before the Tribunal and submissions made by respective advocates before me, following points arise for my determination. I have recorded my findings with reasons thereon as under:-

| <b><u>Points</u></b>  | <b><u>Answer</u></b> |
|---|----------------------|
| (i) Whether the judgment & order under revision is legal, proper & correct ?  | No                   |
| (ii) If not, whether it calls for interference therein through this Tribunal within its limited revisional jurisdiction ? | Yes                  |
| (iii) If yes, whether the proceedings requires re-trial for which remand is the only remedy ?                             | As per final order   |

### **Reasons**

7. **Point No.1 & 2 :-** Inview of undisputed facts narrated in para-1 (supra) it is pertinent to note here that discreption of property, relationship between the parties as landlord & tenant interse, fact of possession of the original tenant over the tenanted property on the *Tillers Day* & legal disability with landlady u/s 32-F of the Act, that the landlady was widow on the *Tillers Day* is the admitted fact on record which does not requires much more discussion. In addition thereto one thing is crystal clear on record that earlier proceedings initiated by the tenant for issuance of certificate u/s 32-G were ended in favour of the landlord as same were tried during the period of legal disability of the landlady. Therefore, once the earlier proceedings come to an end in favour of the landlady on the ground of legal disability verdicts recorded therein are not helpful for deciding the matter at hand.

8. On these touchtone of the above facts, it is pertinent to note here that during the course of arguments advocate for the Revision Petitioner has strongly

submitted that the trial tribunal as well as appellate tribunal has not considered the holdings of the tenant on the particular date for which they are entitled for the certificate. Adv.Karanjkar for the applicants strongly submitted that the holding of the tenant as on the date of cause of action accrued has to be considered and not the holding of the tenant on the date of *Tillers Day*. In support of his submissions Adv.Karanjkar called my attention towards the precedents laid down by our Hon.High Court in the case of ***Vishnu Desai Vs. Indira Patkar, reported in AIR-1972 Bom.207***, wherein Their Lordships have ruled as under :-

*"There is no question of exercising a right to purchase the land by tenant u/s 32F if he is already deemed to have purchase the land u/s 32. But in case covered by Sec.32F, provisions of Sec.32 apply only after an intimation is given as contemplated by Sec.32F(1A) and this is evident from the language of sub-sec.2 of the said section."*

9. Admittedly herein this case while moving the application u/s 32F the tenant has issued a notice u/s 32F so as to exercise the right of purchase on 14/1/99. Inview of the observations made in the judgment referred supra, right to exercise the option accrues after the death of landlady and same has to be exercised within the limits of Sec.32F. In that light the holdings of the tenants on the particular date has to be ascertained by documentary evidence. However, plain reading of the judgment passed by trial tribunal in file No.4/99 nowhere discloses source of documentary evidence, as to how the holding of the tenant on the particular date has been calculated. No evidence has been placed on record to that effect. In short, evidence recorded by the trial tribunal in respect of the holding of the tenant on the material date is not supported by documentary evidence and without giving proper opportunity to the parties on this issue.

10. Touching to the legality of the notice dt.14/1/99 the advocate for the respondents strongly submitted that the notice in question is itself is bad-in-law. Its legality has to be seen by this Tribunal even at the stage of revision for which Adv.Gujarathi called my attention towards the first part of **Sec.32F(1A)**. The relevant part of said section quoted here just for reference which lays down as under :-

*"A tenant desirous of exercising the right conferred on him under sub-section (1) shall give an intimation in that behalf to the Landlord and the Tribunal in the prescribed manner within the period specified in that sub-section."*

11. Plain reading of this provision amply suggest that this provision gives first right to the heirs of the landlord to exercise the right of termination of tenancy in first year and after the completion of first year which is given for the heirs of the landlord then and then tenant has an option to exercise his right by issuing a notice in format i.e. within one year from the right of landlord comes to an end. In short, issuance of notice u/s 32F by the tenant has to be strictly construed within the meaning of Sec.32F(1A). In short, after perusing the record & proceedings, it

gives an indication to my mind that legality of notice dt.14/1/99 is also one of the crucial issue involved in the present Petition which has not properly dealt within proper spirit either by trial tribunal or the appellate tribunal. It is settled principle of law that issue of determination of ceiling on holding u/s 5 of the Act and legality of the notice in question, are mixed questions of facts and law which is required to be decided by offering proper opportunity to both the parties to make out their respective case as per the pleadings put forth. In addition thereto it is pertinent to note here that the trial tribunal is ever expected to consider the scope of Sec.5 even while deciding the application u/s 32G of the Act, which is not done at any point of time in the present lis. In support of above observations advocate for the respondents rightly called my attention towards the precedent laid down by our Hon.High Court in case of **Krishna Vs. Kashiram reported in 2005 Vol.I ALL MR-693** wherein His Lordships ruled as under :-

*"When the question of deciding the issue of tenants having become deemed purchasers in respect of the land hold by tenants, it was obligatory on the part of authority to ascertain whether the lands hold by the tenants was or was not exceeding the limit of ceiling and confirmed to the requirements of 32-A of the Act. It is only to the extent permissible ceiling area the tenants would be entitled to purchase the suit lands as deemed purchasers by virtue of the provisions under the ceiling area is prescribed in Sec.5 of the Act."*

12. I have gone through the precedents very carefully and do find that herein this case there is no documentary evidence as to how the holding of the tenant on the particular date was calculated. Even otherwise plain readings of the observations made in the judgment of the trial tribunal it gives an indication that the Tribunal has considered the ceiling limit up to 60 acres which is not permissible as per Sec.5 of the Act. The relevant observations made in the judgment of the trial tribunal which is not interfered by the appellate tribunal if quoted here that will make easier to see the correctness of the observations made in the judgment under revision. File No.4/99 page-4 :-

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13. Observations made supra do not get the support of Sec.5 of the Act. Even otherwise plain reading of Sec.5 suggest that the ceiling of holding under this Act

is fixed upto 48 acres even otherwise the land is dry land and not of 60 acres. On this touchstone itself the findings of the trial tribunal do not get support either on fact or on law.

14. Now question remains for me up to what extent I should interfere therein. In my humble opinion, question of holding at the material time which shall be the correct date for the consideration of ceiling and what was the holding on that date is mixed question of fact and law, for which detail trial is necessary. The judgment & order under revision as quoted supra suffers from patent error on the face of record does not sustain in eye of law, it calls for fresh trial. Therefore, there is no alternative other than to pass the order of remand and that too with directions to have a retrial of the matter on factual aspects involved in the matter such as holding of the tenant, landlord on the material date, crucial date for determination of ceiling, legality of notice issued by the tenant. All these issues required fresh trial, for which there is no alternative other than to pass the order of remand. With these observations and by keeping reliance on the judgment supra, I hold that the judgment of trial tribunal as well as appellate tribunal does not sustain in eye of law and deserves to be set aside. Not only that, but in the given set of fact fresh trial is necessary on the issues observed supra in support of above observations I may keep reliance on the following two precedents :-

(i) **Baldevji Vs. State of Gujarat, reported in AIR 1979 SC, page-1326**

(ii) **Shamrao Vs. Shantabai, reported in 1995 Vol.I, Mhlj-668**

wherein Their Lordships have ruled as under :

*"The provisions of revision within the limits of Sec.76 of the Act are ever in form of second appeal as contemplated u/s 100 of CPC. Same principle applies for an application for revision before the revenue tribunal. The Tribunal has jurisdiction to examine the finding of fact if same are based on no evidence or are found to be perverse in eye of law. A decision arrived at without deciding the proper issues of fact is an essence of decision contrary to law."*

15. I have gone through these two precedents very carefully and do find that the preposition of law laid down therein certainly helps me to hold that the matter at hand calls for fresh hearing on merit in presence of all interested persons.

16. In short while deciding the revision the Tribunal has to re-appreciate the facts which goes to the legality of the matter at hand and therefore by doing so I hold that only the order of remand will justify while deciding the matter at hand. Having regard to the stale age of proceedings I am of the view that if the time limit is fixed for the matter at the trial tribunal that will meets the end of justice.

17. So far as the judgment & order passed in Tenancy Appeal No.1/20121 under the provisions of 32P of the Act I am of the view that unless the finding on the issue u/s 32M has reached to its finality, there is no cause of action to proceed

with the proceedings u/s 32P of the Act. Therefore, the said judgment & order also does not sustain in eye of law. The entire fact of the judgment & order passed in Tenancy Appeal No.1/2012 is based upon the final verdict recorded in the proceedings of file No.4/99. Therefore, the judgment & order passed in Tenancy Appeal No.1/2012 also does not sustain in eye of law and deserves to be set aside. With these observations I answer the point No.1 in negative, point No.2 in affirmative, point No.3 "as per final order" & proceed to pass; the following order.

### **ORDER**

Both the revision application Nos.SH/IV/1/2013 & SH/II/1/2013 are hereby allowed.

Judgment & order passed by the appellate tribunal i.e. SDO Madha in Tenancy Appeal No.6/2011 & 1/2012 are hereby set aside.

The judgment & order passed by the trial tribunal i.e. ALT Madha in file No.4/99/Padsali/32-G, dt.13/1/2011 & file No.4/99/Padsali/32-P, dt.27/1/2012 are hereby set aside.

The entire proceeding of file No.4/99/Padsali is hereby remanded back to the trial tribunal for fresh trial.

The trial tribunal i.e. ALT Madha is hereby directed to dispose of the matter as early as possible and expeditiously and in any case within one year from receipt of the R&P.

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 courts.