

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

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

No.P/VI/1/95

Shri Chandrakant Raghunath Agine
Through POA—
Smt.Ashalata Raghunath Agine,
R/o.Kadadhe, Tal.Mawal, Dist.Pune.

.... Applicant

VS.

Shri.Rangu Awadaji Jambhulkar,
D/H---
Shri.Baban Rangnath Jambhulkar & otrs.,
R/o.Kadadhe, Tal.Mawal, Dist.Pune.

.... Respondents

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

Appearance :- Adv. Shri D.B.Bhandari for Revision Applicant
Adv. Shri S.G.Patil for Respondents

DATE:- 4th FEBRUARY, 2017

JUDGMENT

1. The applicants have preferred the present revision application by invoking the provisions of Sec.76 of B.T.& A.L.Act, 1948 (hereinafter referred "the Act") against the judgment & order passed by the appellate tribunal i.e. Sub-Divisional Officer, Mawal Sub Dn., Pune (hereinafter referred as the "SDO") in Tenancy Appeal No.40/87, dt.2/1/95 on the grounds more particularly set out in revision application. Parties hereinafter referred in the same sequence and chronology in which they were referred before the ALT Mawal, in tenancy case No.21/72, dt.5/6/79 as the applicants or the respondents as the case may be. The facts giving rise to the present revision application can be summarized as under.

2. The land S.No.137 situated at Village Kadadhe, Tal.Mawal, originally owned by Raghunath Ganesh Agine. The said land was in possession of the Opponents as the tenant in possession since prior to the "*Tillers Day*". On 2/4/58 the owner of the property Raghunath partitioned the land amongst himself, his wife and minor son Chandrakant. In pursuance thereon M.E.No.529 came to be certified in the

revenue record on 18/4/58. The forefather of the Opponent being in actual possession of the entire suit survey number on the "*Tillers Day*". The proceedings u/s 32G in respect of the said land were initiated by the Ld.trial tribunal in tenancy file No.32G/DL/18. During the course of enquiry then ALT come to the conclusion that as the property was partitioned and 1/3rd share therefrom was standing in the name of minor co-owner to the extent of the share of the minor in the suit property, the effect of "*Deemed Purchase*" was postponed and to the extent of 2/3rd share in respect of share of Raghunath & Saibai, the proceedings were concluded in favour of the tenant u/s 32G of the Act. As per record, the minor co-owner attained the age of majority dt.8/9/71. Thereafter within the stipulated period u/s 32F of the Act, the co-owner from the suit land issued a legal notice to the tenants in possession and asked for possession to the extent of his share in the suit land against the tenants. Despite of service of notice dt.30/4/72, which has been duly served against the tenant on 5/5/72, the circumstances constrained him to initiate the proceedings u/s 29 of the Act for possession of tenanted property for bonafide cultivation.

3. The proceedings were decided on merit before the Ld.trial tribunal. On behalf of the landlord, his POA made available for the purpose of cross-examination. On behalf of the tenant, he has also entered in the witness box. After perusing the record produced before him the Ld.trial tribunal come to the conclusion that the alleged partition amongst the co-owners was not genuine, no shares were defined as led down under the provisions of the Act. Therefore, question of postponement of "*Tillers Day*" does not survive and thereby, dismissed application of the landlord for possession by his order dt.5/6/79.

4. Being aggrieved by the said judgment & order passed by the ALT, the aggrieved landlord preferred Tenancy Appeal No.40/87. The Ld.SDO after considering the facts put forth, documents proved and submissions made come to the conclusion that though the delay is condoned the appeal does not sustain any merit and thereby, while dismissing the appeal confirmed the findings recorded by ALT whereby, ALT had dismissed application for possession moved by the landlord. In addition thereto the Ld.appellate tribunal while dismissing the appeal directed the ALT to proceed for the proceedings u/s 32G of the Act in respect of the property in dispute i.e 1/3rd share of the present applicant. Being aggrieved by the said judgment & order dt.2/1/95 the aggrieved landlord has preferred the present revision application on the grounds more particularly set out in the revision application.

5. After receipt of the R&P from both the tribunals below, opportunity of hearing was given to both the parties. On behalf of Opponent Adv.S.G.Patil submitted his oral submissions and also presented written notes on record. As against this on behalf of the applicant, the advocate representing him preferred to submit written notes accompanied with copies of precedents in support of his submissions, which are filed on record on 21/1/2017. In his written submissions dt.21/1/2017 advocate for the applicant / tenant raised following points.

6. He has mainly contended that the order passed in tenancy file No.32G/DL/18, dt.23/12/59 has reached to its finality, wherein the present Opponents have admitted the fact of postponement of "Tillers Day" to the extent of share of the co-owner / applicant. That order has not ever challenged. On the contrary, same has been acted upon to the extent of 2/3rd share only. Subsequent thereto after attaining the majority and despite of receipt of the notice issued by the landlord /applicant, the tenant / Opponents have not acted as per the demand put forth by the landlord. Therefore, in view of the settled preposition of law, judgment rendered in No.32G/DL/18, dt.23/12/59, which has been reached to its finality, acts as a principle of res-judicata as against the present Opponents to dispute all these issues in the present *lis*. Therefore, as they being estopped by their conduct and in view of postponement of "Tillers Day" to the extent of the present applicant by judicial verdict by the Competent Authority, the proceedings ought to have been decided in favour of the present applicant. In support of his submissions he has placed on record following authorities.

- (i) *Laxman Bhor Vs. Chintaman Pagare*, reported in 1987 Mh.L.J.-641
- (ii) *Kunhappa Nair Vs. Surers Kumar*, reported in AIR 1984 Kerala-99
- (iii) *State of West Bengal V/s Hemant Kumar Bhattacharjee*, reported in AIR 1966, SC-1061
- (iv) *Mohanlal Goenka Vs. Benoy Krishna*, reported in AIR 1953, SC-65
- (v) *Mario Shaw Vs. Martin Fernandez*, reported in 1990(1) Mh.L.J., 564
- (vi) *Sita Ram Prasad Vs. Mahadeo Rai*, reported in AIR 1980, Patna-254
- (vii) *Nani Bai Vs. Gita Bai*, reported in AIR 1958, SC-706

7. As against this advocate for the Opponent strongly submitted that the order passed in earlier proceedings are ever non-est in eye of law being passed against the record and statutory provisions led down in the Act. Therefore, same does not amounts either res-judicata or estoppel against the right of the present Opponents so as to exercise the right of purchase given u/s 32G in favour of the *protected tenants in possession* on the "Tillers Day". In support of his submissions Adv.Patil kept his reliance on following precedents.

- (i) *Balkrishna Somnath Vs. Sada Devram Koli*, reported in 1977 AIR 894
- (ii) *Shubhangi Nadgauda Vs. Nago Redekar*, reported in 1992(1) Mah.LR-608
- (iii) *Bhau Martand Shelar Vs. Hajabi Nadaf*, reported in 1975 TLR-43
- (iv) *Sambhaji Patil Vs. Anna Patil*, reported in 1973, TLR-50

8. After considering the entire R&P from both the tribunals below, the judgment & orders supported by reasons recorded by tribunals below, which are concurrent in nature, and submissions made by respective advocates before this Tribunal, 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 plea raised by the Opponents for exercising the right u/s 32G of the Act barred by the principle of	Negative

	res-judicata or estoppel ?	
2	Whether the judgment & order under revision calls for interference therein through this Tribunal ?	Negative
3	Whether the judgment & order passed by the Ld.appellate tribunal in Tenancy Appeal No.40/87 calls for interference therein, even in changed circumstances in the light of events took place pending the <i>/is</i> ?	Negative

Reasons

9. **Point No.1 to 3:-** Facts either admitted otherwise not seriously disputed or otherwise duly proved in the trial in oral evidence or based on Public Documents, such as revenue entries can be summarized as under, so as to avoid repetition of the facts involved in the */is* which are as under :-

10. Original owner of the disputed land Raghunath Ganesh Agine applied before the revenue authorities for certification of mutation entry so as to take the effect of the partition of the suit property amongst three co-owners. The certified copy of said mutation entry is at page-211 from trial court's record. The father of the present Opponents was the tenant in possession since prior to 1/4/1957 whose name was entered to that effect, through M.E.No.366 which is at page-209 of trial court's record. As per the recitals of the said entry the nature of possession of the tenant in possession on 20/5/55 as "ordinary tenant" has been certified and same has been reached to its finality as the landlord has nowhere disputed the same. The present Opponents are the LR's of the original tenant. In addition thereto parties to the */is* have admitted the fact that by taking the note of possession of the tenant over the entire S.No.137, on the "*Tillers Day*" two owners therefrom were found out of legal dis-ability. Therefore, proceeded to the extent to their 2/3rd share u/s 32G of the Act were started in tenancy file No.32G/DL/18, which has been decided by order dt.23/12/59, in which certificate i/s 32G has been granted in favour of the tenant to the extent of 2/3rd share and so far as the share of the present applicant, who found to be minor on the date of "*Tillers Day*", the effect of "*Deemed Purchase*" was postponed to the extent of his share. It is also not disputed by the Opponents that order passed by ALT in tenancy file No.32G/DL/18, dt.23/12/59 was not ever challenged and same has been acted upon only to the extent of 2/3rd share and so far as 1/3rd share of present applicant remained in their possession as tenant in possession. Furthermore, the Opponents have also not disputed the fact that after the landlord / applicant has attained the age of majority, he has issued notice dt.30/4/72 within one year from the date of attaining the majority and further they have also not disputed the receipt of the said notice dt.5/5/72, which is on record at page-7. In short, by taking note and effect of order passed in tenancy file No.32G/DL/18, dt.23/12/59, the applicant / landlord has

preferred to exercise his right to obtain disputed land for bonafide cultivation after he attains the age of majority.

11. In view of above undisputed facts the legal issue involved in the present matter has to be examined minutely. At first advocate for the applicant strongly submitted in his written arguments that the judgment & order passed in No.32G/DL/18, dt.23/12/59, has reached to its finality and same cannot be challenged or agitated in the present proceedings on any law point involved therein. In short, by keeping reliance on the judgment & order passed in the said file, the advocate for the applicant strongly submitted that postponement of "Tillers Day" on the ground of minority of the applicant should not be re-opened and considered by the Tribunal, which the Ld.appellate tribunal has not properly appreciated. Therefore, this Tribunal within its revisional jurisdiction should not re-appreciate the same.

12. In support of his submissions, advocate for the Opponent kept his reliance on the following two precedents :

(i) *Balkrishna Somnath Vs. Sada Devram Koli*, reported in 1977 AIR 894

(ii) *Sambhaji Patil Vs. Anna Patil*, reported in 1973, TLR-50

I have gone through the above precedent very carefully and do find that the circumstances of those cases are quite distinct and not identical with the facts and circumstances of the case at hand. The issue involved in the present *lis* is in respect of statutory right of the tenant in possession on the "Tillers Day" and legality of the order of postponement of "Tillers Day" by the tribunals below.

13. While examining its legality by this tribunal, may state here that except certified copy of M.E.No.529, there is no documentary evidence in respect of the alleged partition. The mutation entry relied by the applicant is completely silent on the point of alleged partition as regards day, date, month and year of the alleged partition. The contents of M.E.No.529 indicates that the application moved was of 29/3/58, which is just two days before 31/3/58, as the date laid down by the Statute. In that context, while considering the evidentially value of M.E.No.529, I may state here that the so called application dt.29/3/58 must be on record so as to give details of day, date, month and year of alleged partition, but, same is not on record.

14. Secondly, on behalf of applicant he has not made available himself for the purpose of cross-examination on the point of alleged partition. on behalf of applicant his sister has entered in witness box, whose statement is at page-69, Ashalata Agine, POA of the applicant, what she has deposed in her deposition if quoted here just for reference would certainly help to find out the evidence on the point of alleged partition, which runs as under :-

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15. Plain reading of this evidence suggests that the application moved for M.E.No.529 or the deposition of the witness Ashalata Agine, determines the share of the parties, but not define the boundaries of their respective shares. Determination of share does not amount partition. At the most it would be treated as severance of status and not the division of the property. To establish the division of the property, there must be speaking evidence on the point of manner in which the partition was effected, whether it was East, West, North, South or in any other manner, so as to fix the boundaries of the defined share. However, neither there is document nor there is evidence on the point of such partition, which is recognized by the Statute, under which the proceedings have been initiated.

16. On this touchstone, what the law led down is of vital importance. The advocate for the Opponent rightly placed his reliance on following two precedents:

(i) *Balkrishna Somnath Vs. Sada Devram Koli*, reported in 1977 AIR 894

(ii) *Sambhaji Patil Vs. Anna Patil*, reported in 1973, TLR-50

The preposition of law on the point of proof of partition required as led down by Their Lordships can be summarized as under :

*"Disabled person's share 'in the joint family' must have been '**separated by metes and bounds**'. Separation from the joint family means, separation from all the joint family assets. Otherwise sharer remains partly joint and, to that extent, is not separated from the joint family. Notional division or division in status also may not be enough because the Act insists on separation by '**metes and bounds**'. 'Ordinarily 'metes and bounds' are appropriate to real property, meaning, as the phrase does, 'the boundary lines of land, with their terminal points and angles'. Share of disabled person in the joint family must be separated by '**metes and bounds**' in a certain proportion as required by that sub-section. Unless the partition is effected in prescribed manner and before the prescribed date, it cannot in any manner affect the tillers' day".*

17. I have gone through the above two precedents very carefully and do find that the pleadings put forth and evidence led or documents relied by the applicant are not sufficient to establish the fact of partition of the property amongst the three co-owners, but the documents relied are sufficient only to establish the division of status and nothing more.

18. Now, in view of the issue of res-judicata or effect of principle of estoppel agitated by the applicant before this Tribunal, I may state here that the precedents relied by the applicant are based on distinct facts and circumstances of the case.

However, our Hon.High Court, while deciding the case of *Bhau Shelar Vs. Hajabi Nadaf*, reported in 1975, TLR-43, guides me to hold that erroneous judgment passed by the Ld.trial tribunal under the Statute are not sufficient to make out the case to apply the principle of res-judicata. The proposition of law led down in the said precedent is quoted here just for reference as under :

*"The general principle of law is that just as a decision given by a court which has no jurisdiction to try a suit, is a nullity and will not operate as res-judicata for a fresh suit, **similarly** where (as in this case) the ALT refused to exercise the jurisdiction vested in it, and instead of carrying on the proceeding u/s 32G, made an order dropping it, on an erroneous view of the law, such order will not operate as res-judicata in fresh proceedings u/s 32G".*

19. I have gone through the above precedent very carefully and do find that the same guides me to hold that, herein this case, the judgment passed in earlier proceedings which is strongly relied by the applicant is not ever helpful to them, as the order passed by then ALT in file No.32G/DL/18, dt.23/12/59, is based upon erroneous interpretation of law made by the Ld.trial tribunal while deciding the matter at material time.

20. Herein this case, out of three, two co-owners were major and only the applicant was minor. In that context, when one of the co-owner is found major the applicability of legal dis-ability comes to an end and vesting of title in favour of tenant by effect of Statute cannot be postponed, merely because the other co-owner is under dis-ability.

21. On this touchtone, the Language of the Proviso attached to Sec.32F(1) if quoted here, it will make clear that when one of the owner is major and another is minor, the effect of "*Tillers Day*" could not be postponed. The relevant part of the Proviso is quoted here as under :

Section.32(F)(1)-----

(a)-----

(b)-----

(i)-----

(ii)-----

(iii)-----

(iv)-----

*"Provided that where a person of such category is member of a joint family, the provisions of this sub-section **shall not apply if at least one member of the joint family is outside the categories** mentioned in this sub-section unless before 31/3/1958 the share of such person in the joint family has been separated by **metes and bounds** -----".*

22. In my view, the plain reading of this Proviso, suggest that in absence of sufficient pleadings and proof about the partition, share of the applicant by 'metes

and bounds', the Proviso will not help the applicant, so as to postpone the effect of the "*Tillers Day*" against him. Herein this case, as observed supra, there is no *iota acceptable evidence*, on the point of alleged partition establishing the separation by 'metes and bounds'. Therefore, the said provision if read in consonance with the effect of the partition entry relied by the applicant, I am of the view that the provision of Proviso is not helpful for the applicant to come out of the clutches of Sec.32G of the Act or otherwise to claim the benefit of Sec.32(F)(1A) of the Act for the purpose of postponement of the "*Tillers Day*".

23. Last, but not the least, issue in respect of effect of subsequent proceedings took place between the parties. Advocate for the Opponent has produced certified cope of order passed by the ALT under the provisions of Sec.32G of the Act, in respect of the disputed portion of the suit land, which indicates after the decision of appeal and pending the revision, as there was no 'stay order' to the order under revision, ALT has proceeded according to law and decided the matter for grant of certificate u/s 32G of the Act, in favour of the present Opponents. On the contrary, said order dt.23/12/59 is not yet challenged by the present Revision Petitioner by invoking the remedy of appeal / review / revision. These facts are self explanatory to close the subject matter in dispute, that everything has become final for the issues raised by the applicant and made the revision application infructuous.

24. Now the only issue remains for my consideration and that is, jurisdiction of the revisional court to interfere in the orders passed by the tribunals below. It is well settled principle of law that, the revisional court has no wide scope to re-appreciate the evidence on record within its limited jurisdiction, specially when the orders passed by tribunal below are concurrent in nature. Still then inview of above observations made supra, I do find that the reasonings recorded by tribunals below rejecting the application of the landlord for possession u/s 29 are supported by sound reasonings in support thereof. There is no question of application of res-judicata, which helps the applicant to get ride therefrom. Therefore, I do find that there is no reason to interfere with the judgment & orders passed by the tribunals below, wherein the Ld.appellate tribunal has directed to trial tribunal to take effective steps for grant of certificate u/s 32G of the Act and similarly, rejected the application of the applicant for possession on the findings recorded in his judgment. With these observations, I answer the Point No.1 to 3 in negative and proceed to pass the following order.

ORDER

The revision application stands dismissed.

The judgment & order passed by the tribunals below i.e. ALT Mawal & SDO Mawal are hereby confirmed.

The application moved by the landlord for possession u/s 29 of the Act stands dismissed.

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.