

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

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

**No.151/B/2001/P**

M/s.Halan Paper Converters Pvt.Ltd.,  
20, Bhatiya Nivas, 233/235,  
Samual Street, Bombay-400 003.

.... Applicant

**VS.**

1. The State of Maharashtra  
Through---The Collector Pune
2. The Addl. Collector, Pune

.... Respondent

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

Appearance :- Adv. Shri S.B.Gujarathi for Revision Applicants.  
Pramod Bombatkar, A.G.P. for the Respondent State

**DATE:- 26<sup>th</sup> APRIL, 2017**

**JUDGMENT**

1. Being aggrieved by the judgment & order passed by the Addl.Collector, Pune in file No.PTA/84C/SR/2/2001, by order dt.22/10/2001, the aggrieved applicant has preferred the present revision application by invoking the provisions of Sec.76 of B.T.& A.L.Act, 1948 (hereinafter referred "the Act"). Facts either admitted or not seriously disputed or otherwise duly proved before the tribunal of first instance i.e. Addl.Collector, Pune can be summarized as under.

2. The land Gat No.1844, adm.4H.28R., situated at Village Medankarwadi (Chakan), Tal.Khed, was originally owned by three co-owners. One Jagannath Medankar and Ravindrakumar Medankar, were amongst them. M/s.Halan Paper Converters Pvt.Ltd., the Body Corporate, constituted under the provisions of Companies Act, is presented through its Director. The company was intending to start and develop its business within the vicinity of Chakan. Therefore, they have entered into an agreement to purchase the suit portion i.e. portion of 84R from the suit land through its co-owners Jagannath & Ravindrakumar. The company was intending to purchase the said portion for its non-agricultural use and particularly

for the industrial purpose. Therefore, before the transfer of property the Vendor as well as Vendee, both appeared before the Revenue Authorities and moved application for permission u/s 63 of the Act for valid transfer. After obtaining the valid permission through the Competent Authority in favour of the company, sale-deed dt.21/2/92 has been effected based on valid permission accorded through the Competent Authority. While granting the permission the authorities have granted such permission subject to conditions embodied in the Annexure attached to the order of permission. All the terms and conditions embodied in the order dt.18/1/92 itself. After the transfer has been effected, name of the purchaser i.e. the company came to be recorded in record of rights, through M.E.No.4257 and the possession which was accorded on the basis of agreement of sale was confirmed by the sale-deed through which the title has been conferred with the company.

3. With these short undisputed facts, it is the case of the State, that as per the terms and conditions embodied in the permission order the company ought to have obtained NA permission u/s 44 of MLRC, 1966 and they ought to have start the use of the property for industrial purpose within one year therefrom. Neither the company has succeeded in obtaining NA permission of the property nor they have initiated or even had taken effective steps for the use of the suit property for industrial purpose within the stipulated period in the conditions embodied. Not only that, but, the extension sought by the company for the compliance of the conditions embodied was not considered and lastly, after considering the over all facts and circumstances of the case, Addl.Collector, Pune has initiated the proceeding by invoking the powers u/s 84CC of the Act and thereby, after holding enquiry under the said provisions, forfeited the land to the Government for the non-compliance of conditions embodied attached to the permission. The said order came to be passed on 22/10/2001.

4. Being aggrieved by the said judgment & order, the aggrieved land-owner / Pvt.Ltd.Company preferred the present revision application by invoking the provisions u/s.76 of the Act, on the grounds more particularly set out in revision application.

5. Pending the revision the record & proceedings of the tribunal below was called for. So also my Ld.Predecessor, after considering the importance and nature of dispute, being in the interest of Public at large, by considering the provisions u/s 322 of MLRC, issued a letter to the Collector Pune, to appoint Competent Authority or Asstt.Govt.Pleader, to represent the State, so as to avoid the ex-parte decision in the matter as against the State, mainly when the proceedings have been initiated by invoking the suo-moto powers vested with the Collector. In pursuance thereof Ld.AGP has appeared on behalf of the State, who has submitted the detailed say to the revision application. At the stage of final hearing, I heard Ld.Adv.S.B.Gujarathi for the Revision Petitioner and Ld.AGP Pramod Bombatkar for the State at length. After considering the record & proceedings from the tribunal below and the submissions made at length by the respective Ld.advocates before this Tribunal, following points arise for my determination. I have recorded my findings with reasons thereon as under :-

	<b><u>Points</u></b>	<b><u>Findings</u></b>
1.	Whether the judgment & order passed by the Addl. Collector, Pune is legal, proper, correct and within his jurisdiction as per Sec.84CC of the Act ?	Negative
2.	If not, whether the judgment & order under revision calls for interference therein through this Tribunal ? If yes, up to what extent ?	Affirmative

**Reasons**

6. **Point No.1 :-** Before considering the facts and circumstances involved in the matter, at first I may state here that the disputed transaction through sale-deed dt.21/2/92 in between Pvt.Ltd.Company and the original co-owners of the land and not amongst the landlord & tenant. Admittedly, as the transaction of transfer was proposed with a Pvt.Ltd.Company, application was moved for permission u/s 63 of the Act before the transfer. Accordingly, the permission has been accorded through the Competent Authority by order dt.18/1/92 and thereafter, transfer of the disputed land effected through sale-deed dt.21/2/92 i.e. within 3 months. After perusing the documents from the record, it reveals that the proposed transfer was also with intend to have use of the property for non-agricultural & industrial purposes. Not only that, but, it is also not disputed even by the State that the land was in possession of the company even prior to the sale-deed on the basis of agreement of sale. In that context, while considering the import of conditions embodied in the permission order, condition at Sr.No.1 & 2 are of vital importance while deciding the matter at hand. If those conditions are quoted here that will be helpful for ready reference, which are as under:-

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7. Plain reading of those conditions speaks volume that the company ought to have start the use of the property for industrial purpose within one year from the date of transfer. So also the proposed transfer ought to have been effected within three months from the date of permission and before the use of property for the industrial purposes the company ought to have obtain NA permission u/s 44 of MLRC, 1966. Herein this case, the company has not disputed the fact, that it has not moved NA permission from the date of transfer till 2000. However, observations made in the judgment are self-explanatory to the effect that the company had moved the revenue authorities for extension of said conditions. The report was called for through revenue authorities through letter dt.3/10/2000 and on the basis of report dt.3/10/2000 Addl.Collector, Pune has initiated the proceedings u/s 84CC suo-moto and not on the basis of application through interested persons.

8. In the above context, what the record speaks, that is very material. It is pertinent to note here that, while moving the application before the Addl.Collector, Pune, the company has specifically contended that due to the family dispute amongst the Directors, effective steps cannot be taken so as to initiate the proceedings for NA permission. So also the proceeding moved on 27/2/2000 for N.A.order were returned for its compliance by letter dt.24/10/2000. While submitting the detailed say the company has specifically narrated the reasons, as to why the steps were not taken for obtaining NA permission, which are as under :-

*Letter dt.6/9/2000*

*"----- But due to some unavoidable situation there was dispute and separation took place between the Directors i.e. between the 4 brothers and the question about ownership and who is going to run the company affair had remained undecided for a long time.----- Because the uncertainty we were not able to construct our factory on the land already purchased within stipulated time given to us vide your above permission.-----"*

9. Not only that, but, while drawing the Panchanama, as per the directions of the lower tribunal, the revenue officer concerned has observed, that the company has carried on effective construction at the site and also started the use of the property for industrial purpose by erecting shed and that is before initiating the proceedings. The relevant averments from the Panchanama runs as under :-

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10. The recitals from the Panchanama itself speaks volume, as to how the use of the property for non-agricultural / industrial purpose by erecting shed therein started and how the business of the company is going on at the site. In that context, it is pertinent to note here that, issue remains for dispute is that, as to whether on the date of taking cognizance by Addl. Collector, Pune, the property was within the meaning of the word as "land" used in the Section and as to whether the Collector has jurisdiction to initiate such proceedings u/s 84CC of the Act, within his competence or not. While examining this legal requirement, at first I may state here that, as per the provisions of Sec.2(8) of Tenancy Act, "land" means land used for agricultural purposes i.e. an agricultural land and not N.A. property used for industrial purpose. The order purports to be passed u/s 84CC applies only to the "agricultural lands", but the moment the "land" ceased to be used for "agricultural purpose" and use of the property followed for the industrial purpose, the Collector's jurisdiction u/s 84CC comes to an end. In support of above observations, I may keep reliance on the precedent laid down by our Hon.High Court, *in the case of Chimanimam Dhotre Vs. Vishwanath Ipparkage, reported in BCR 1990(1)-274*. The preposition of Law laid down therein can be summarized as under :-

*"The order purports to be passed u/s 84CC of the Act, only applies to the "agricultural lands". The moment "land" ceased to be used for "agricultural purpose", the Collector's jurisdiction u/s 84CC comes to an end. The provisions of Sec.84CC wholly precludes the jurisdiction of the Collector to resort to that section for passing the order of forfeiture of the property soon after the use of the property for industrial purposes has been prima-facie established".*

11. In short, after perusing the facts put forth and the preposition of Law laid down in the above precedent, I do find that, when prima-facie on the date of invoking the powers u/s 84CC, use of the property for industrial purpose was established, the jurisdiction of the Collector to invoke powers at such belated stage for the breach of the conditions are not ever supported by any legal preposition of Law.

12. Secondly, it is well settled principle of law, that the powers of the revision vested with the authority, particularly when the provisions of limitations are not made applicable thereto should be invoked in a "*reasonable period*" and not at

such belated stage i.e. after eight years from the date of transfer. Admittedly, herein this case, transfer effected was certified in revenue record through M.E.No.4257 on 24/6/92. The suo-moto proceedings have been initiated by the Collector in the year 2000. On these factual aspects, Ld.Adv.Gujarathi for the applicant rightly called my attention towards the following precedents.

- (i) *Mohamad Kavi Vs. Fatmabai Ibrahim, reported in 1997(6) SCC-71*
- (ii) *Bhaniben Tandel Vs. State of Gujarat, reported in AIR 1991 Guj.184*

The preposition of Law laid down in those precedents can be summarized as under:

*"Where no time limit is prescribed for exercise of a power under a statute it does not mean that it can be exercised at any time; such power has to be exercised within a reasonable time".*

While deciding the case of *Mohamad Kavi quoted supra*, the sale-deed was of 1972 and powers of revision were invoked in 1976. Similarly, in the case of *Tandel*, revisional powers for the order u/s 84C against the mutation entry certified in the year 1969 were invoked in 1975. In both the cases after considering the delay therefore, the Hon.Supreme Court as well as Hon.High Court has ruled, "that the revisional powers were not used within a *"reasonable period"*. Herein this case, the delay is more than eight years. Therefore, even as per settled legal position, the Collector has not used the powers vested in reasonable period and hence does not sustain in eye of Law.

13. In the given set of facts, after perusing the over all facts and circumstances of the case, I do find that there might be procedural irregularities on the part of the company for initiating the work of construction at the site without obtaining NA permission, but, in my view, such construction and use of property at the site for the industrial purpose without obtaining NA permission may amounts irregularity at the face of record under the different Statute, but, that does not empower the Collector to invoke the powers u/s 84CC, so as to forfeit the property with the Government and that too by suo-moto revisional powers at belated stage. With these observations, I answer the 'Point No.1 in Negative'.

14. **Point No.2 :** In view of above observations, it has become crystal clear that the judgment & order passed by the Addl.Collector, Pune, neither sustain in eye of law on facts or even on the points of Law of Limitation. In view of the precedent laid down by Hon.Supreme Court and our Hon.High Court, once the Tribunal come to the conclusion that the order passed by Addl.Collector, Pune, does not sustain either on facts or on the point of Law, this Tribunal has got wide enough powers u/s 76(1)(a) of the Act to interfere therein and to set aside the same to make the full-fledged justice. With these observations, I answer 'Point No.2 in Affirmative' & proceed to pass the following order.

### **ORDER**

The revision application is allowed.

The judgment & order passed by the Addl.Collector, Pune, is hereby set aside.

However, the tribunal below is at liberty to take proper legal action against the company / applicant, if they are found at fault for non-compliance of Section 44 of MLRC, 1966 as they deem fit.

No order as to costs.

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

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