

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

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

**No.TNC/REV/77/2003/NS**

Shri Baban Dnyanu Nhavi,  
R/o.Varud, Tal.Khatav, Dist.Satara.

.... Applicant

**VS.**

1) Baburao Sakharam Madane  
2) Siddheshwar Balwant Inamdar  
3) Vishwanath Balwant Inamdar  
All R/o.Varud, Tal.Khatav, Dist.Satara.

.... Respondents

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

Appearance :- Adv. Shri Ranaware for Revision Applicant.  
Adv. Shri Budhawale & Jadhav for Respondents

**DATE:- 29<sup>th</sup> MARCH, 2017**

**JUDGMENT**

1. Being aggrieved by the judgment & order passed by Ld.appellate tribunal i.e. Sub-Divisional Officer, Phaltan Sub Dn., Phaltan (hereinafter referred as the "SDO") in Tenancy Appeal No.24/2001, dt.30/4/2002, dismissing the appeal, the aggrieved appellant has preferred the present revision application by invoking the provisions of Sec.76 of B.T.& A.L.Act, 1948 (hereinafter referred "the Act"). Parties hereinafter referred in the same sequence and chronology in which they were referred before the ALT Khatav, in tenancy file No.1/2001(70b/Varad), as the applicants or the respondents as the case may be. Facts giving rise to the present revision application can be summarized as under.

2. The applicant has moved an application u/s 70b of the Act, for declaring him as a tenant in possession over the suit property i.e. Gat No.58/A&B, situated at Village Varud. Applicant has specifically contended that since from his father both the lands are in actual physical possession as the tenant in possession. The name of the opponent No.3 appearing in the column of other rights is ever fiscal in nature. As the land was initially Inam Land, after the implementation of Inferior Watan Abolition Act, the said land regranted in the name of Inamdar, who was

holding the same. However, the opponent No.3 has no concern whatsoever. Therefore, he be declared as the tenant over the suit property.

3. The proceedings came to be registered as tenancy file No.70b/Varud/1/2001. Notices were issued to the opponents. The applicant as well as opponent No.3 entered in the witness box and gave their respective statements on oath. So also they have also produced relevant 7/12 extracts of the suit property in support of their rival contentions.

4. After considering the facts put forth and evidence laid, documents proved, the ALT come to the conclusion that the applicant has proved his tenancy rights over the suit property, as the tenant in possession through his father. Accordingly, the applicant has been declared as 'ordinary tenant' by accepting the interest of the opponent No.3 in the suit property as the 'permanent tenant' (Mirashidar), having interest therein.

5. Being aggrieved by the said judgment & order, the opponent No.3 has preferred Tenancy Appeal No.24/2001 before the SDO Phaltan, which came to be dismissed by judgment & order dt.30/4/2002.

6. Being aggrieved by the said judgment & order, whereby the Ld.appellate tribunal has confirmed the reasonings and findings recorded by ALT, the aggrieved opponent No.3 has preferred the present revision application on the grounds more particularly set out in the revision application.

7. After perusing the R&P from both the tribunals below and documents filed alongwith it, full-fledged hearing has been given to both the advocates representing the parties. After considering the facts put forth, evidence led, documents proved and the submissions made by respective 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 applicant has proved his possession over the suit property in the capacity of tenant in possession as the LR of the deceased tenant as against the opponent Baburao Madane?	Affirmative
2. Whether the judgment & order passed by the Ld.appellate tribunal confirming the findings recorded by Ld.trial tribunal calls for interference therein through this Tribunal within its limited revisional jurisdiction?	Negative

### **Reasons**

8. After perusing the R&P from both the tribunals below, it appears that the applicant has moved an application u/s 70b of the Act, to have a 'positive

declaration' in his favour, as the tenant in possession as against the opponents. The ALT Khatav has declared the applicant as the 'ordinary tenant in possession' and the opponent No.3 as the 'permanent tenant' (Mirashidar). Being aggrieved by the judgment & order dt.30/6/2001, the Opponent No.3 had preferred an appeal by invoking the provisions of Sec.74 of the Act, before the Ld.appellate tribunal i.e. SDO Phaltan. On this touchstone, advocate for the Respondents strongly argued that the order passed u/s 70b of the Act, is not appealable. If appeal is preferred and decided by the Ld.appellate tribunal that is not the proceeding in eye of law. I do not find strong substance therein. On the contrary, plain reading of Sec.4 r/w 70b of the Act, makes it clear that 'positive or negative declaration' of relationship is governed by Sec.4 and Sec.70 of the Act, is the part of procedure for the Mamlatdar. Therefore, absence of entry of order u/s 70b in Sec.74 does not make any difference as the appeal is ever maintainable against such order as per Sec.4 r/w 74(1)(a) of the Act. In support of above observations, I may keep reliance on the precedent laid down by Hon.Gujrat High Court *in a case of Keshavlal Paraji Vs. Gujrat Revenue Tribunal, reported in AIR 1976 Guj.146 (DB)*. Their Lordships have considered the scope of these two provisions and laid down the Law to the effect of maintainability of the appeal against the order passed u/s 70b of the Act as follow.

*"Sec.4 covers the cases of tenant or a protected tenant as much as it also covers the cases of deemed tenants. If this is so, whenever a Mamlatdar gives his decision with regard to a particular person that he is a tenant, he virtually does so under the provisions of Sec.4. Therefore, whenever a Mamlatdar holds that a particular person is deemed tenants u/s 4, that implicit in that decision a finding that he is a tenant. If that be so every decision of the Mamlatdar on the question of relationship as landlord and tenant is ever appealable u/s 74(1)(a) of the Act."*

9. In addition thereto, while considering the revision before the Tribunal against such order, the Hon.High Court has ruled as under :-

*"Whether the Collector has passed a particular order under his appellate powers or under his revisional powers it makes no difference and the Tribunal can exercise its revisional jurisdiction provided any grounds mentioned in Clause-(a)(b)(c) of Sec.76(1) is satisfied."*

I have gone through the above precedent very carefully and do find that the proposition of law laid down therein certainly helps me to hold that, in the peculiar set of facts the order passed by Ld.appellate tribunal in Tenancy Appeal No.24/2001 is preferred within the statutory jurisdiction of Ld.appellate tribunal and the ground of objection raised to that effect by the Opponent / Mirashidar is not sustainable.

10. Secondly, it is pertinent to note here that, parties to the */is* have not disputed the facts, that Opponent No.1 & 2 are the owners / landlords, Opponent No.3 claims right of tenancy as 'ordinary tenant' through his father and name of

the father of the Opponent is appearing in the column of occupancy just below the line, which gives an indication the nature of his right as a 'permanent tenant' as defined u/s 2(10)(A) of the Act. In that context, it is pertinent to note here that, the revenue record in form of M.E.No.291 & 154, is also filed on record alongwith the application dt.7/2/2017 before this Tribunal. In addition thereto these entries, which has been reflected in the column of occupancy as well as other rights, have given its positive effect in the column of cultivation in the name of applicant. Not only that, but, the name of the applicant is appearing in the column of cultivation as the tenant in possession on the basis of rent. Not only that, but, the landlord has issued a receipt of rent in favour of Sakharam Ramoshi on 17/5/52. In addition thereto, during the course of enquiry before the ALT, statement of applicant and Opponent No.3 were recorded. However, the Opponent No.3 has not produced any documentary evidence as to why his name is not appearing in the column of cultivation as against the interest of the applicant not properly explained. In the given set of facts, fact of tenancy observed and recorded by the tribunals below concurrently is a matter of finding of facts recorded by ALT and confirmed by the Ld.appellate tribunal. In that sequence, suffice to say that, when there is no sufficient documentary or oral evidence, so as to contradict the observations made by the tribunals below while passing the judgment & order under revision, which is concurrent in nature, same does not call for interference therein through this Tribunal as a revisional court to scrutinize the legality of the order within the scope of Sec.76(1)(a to c) only and should not enter to re-appreciate the fact finding reasonings recorded by the tribunals below, which are concurrent in nature. In support of above observations, I may keep reliance on the following precedents:

- (i) *Gangubai Vs. Kishanrao, reported in 2012 ALL MR(5)-114*
- (ii) *Maruti Bala Raut Vs. Dashrath Babu Watare, reported in AIR 1974 (SC)-2051*

The preposition of law laid down therein can be summarized as under:

*"The Spl.Dy.Collector dealt with the Mamlatdars order as an appellate authority and was, therefore, entitled to appreciate the evidence and come to the own conclusion, the Tribunal while exercising its powers u/s 76 of the B.T.& A.L.Act, had no such power. While dealing with revision, the Revenue Tribunal has no power to appreciate / discuss evidence and to come to its own conclusion, while exercising its power u/s 70 of the Act."*

11. 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, on facts the judgment & order passed by the tribunals below being concurrent in nature and as the applicant / Opponent No.3 has failed to make out any ground within the meaning of Sec.76(1)(a to c), so as to interfere therein, I do find that same does not call for interference. In the given set of facts by answering the 'Point No.1 in Affirmative' & Point No.2 accordingly as per final order & proceed to pass the following order.

**ORDER**

The revision application stands dismissed.

The judgment & orders passed by tribunals below, which are concurrent in nature are hereby confirmed.

No order as to costs.

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

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