

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

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

No.77/B/99/NS

Shri Sardar Munaf Patel Applicant
D/H---Smt.Salima Sardar Patel,
R/o.1913, Raviwar Peth, Wai,Dist.Satara.

VS.

1) Shri.Raghunath Krishna Gole Respondents
2) Shri.Jagannath Krishna Gole
Through POA-Shri.Prakash Jagannath Gole
R/o. Sultanpur, Post-Bopardi,
Tal.Wai, Dist.Satara.

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

Appearance :- Adv. Smt.S.V.Jaikar for Revision Applicant.
Adv. Shri Ambadas Chatuphale for Respondents

DATED:- 15th OCTOBER, 2019

JUDGMENT

Being aggrieved by the judgment & order passed by Ld.appellate tribunal i.e. Sub-Divisional Officer, Wai Sub Dn., Wai (hereinafter referred as the "appellate tribunal") in Tenancy Appeal No.15/98, dt.9/7/99 the Revision Petitioner / landlord has preferred the present revision application. Undisputed facts in the present revision application are as under.

2. The land S.No.294/5 new Gat No.35/5 adm.0.45R. situated at Village Sultanpur, Tal.Wai, was owned by Munaf Patel as Inamdar. The land in dispute was an Inferior Watan of Class-VI. One Shri.Krishna Gole was the original tenant over the disputed land since prior to "*tillers' day*" and on "*tillers' day*". The original landlord reported dead on 30/5/1951 living behind widow Jannatbi as the LR. Though the land was in possession of the tenant on the "*tillers' day*", landlady / Inamdar being widow, under legal dis-ability, the "*tillers' day*" was postponed. Not only that, but in view of the application of Inferior Watan Abolition Act, initially the land was vested with the Government and the regrant order of the land in favour of the Inamdar passed on 18/1/1965. After passing the order of regrant in favour of the landlady, she reported dead on 13/7/1994. The original tenant Krishna was

also reported dead on 20/7/1962. The LR's of the deceased tenant came on record through M.E.No.5307.

3. With these short undisputed facts, the legatee through the original landlady Sardar Munaf Patel, filed an application before ALT, contending that the tenant who was in possession of the disputed land on "tillers' day" failed to exercise his right of purchase within two years from the date of death of landlady. Therefore, by legal fiction his right to purchase has become ineffective. In pursuance thereof, the LR's of the deceased landlady, who claims title over the property on the basis of Gift, issued a legal notice on 16/1/1997 to the tenant in possession and asked for possession u/s 32(O) of the Act. The tenant in possession replied the same, however, failed to handover the possession of the land to the land-owner. Therefore, he has initiated the proceedings before ALT u/s 32P of the Act. The proceedings came to be registered as file No.197/97. Both the parties have participated in the proceedings before ALT and the application moved by the landlord came to be allowed by order dt.27/8/1998. Being aggrieved by the said order the tenant has preferred Tenancy Appeal No.15/98 before SDO Wai. The said appeal came to be allowed by order dt.9/7/1999 and thereby, the order of possession passed in favour of the landlord came to be rejected. Being aggrieved by the said judgment & order, in the first round of litigation this revision was heard before this Tribunal, on 8/2/2017 this Tribunal had allowed the revision application and thereby, confirmed the order of possession passed by ALT. Being aggrieved by the same, tenant has preferred Writ Petition before the Hon'ble High Court, through Writ Petition No.5009/2017. The said Writ Petition came to be allowed by judgment & order dt.3/6/2019. The Hon'ble High Court has remanded the proceedings to this Tribunal with certain directions to rehear the matter on merit on the particular points raised before Hon'ble High Court. In pursuance thereof, after the receipt of record & proceedings from both the tribunals below, heard Ld.Adv.Smt.Jaikar for the Revision Petitioner / landlord & Ld.Adv.Shri.Chatuphate for the Respondent / tenant. After considering the oral as well as written submissions made from both the sides through their respective advocates, and after keen perusal of R&P from both the tribunals below, 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 right of tenant to purchase the land u/s 32G of the Act is affected by the application of Sec.32F(1) of the Act, in view of the earlier orders passed u/s 31(1) of the Act?	Negative
2.	Whether the tenant has proved his right to purchase the land within the strict compliance of Sec.32F(1A) of the Act?	Affirmative
3.	Whether the judgment & order passed by Ld.appellate tribunal calls for interference therein	Negative

	within the limited revisional jurisdiction of this Tribunal as per Sec.76 of the Act?	
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Reasons

4. Point No.1: After perusing record & proceedings from both the tribunals below and after considering the undisputed facts narrated in Para No.2 supra, Point No.1&2 quoted supra are the backbone issues which were highly contested before the Tribunal after the remand order passed by the Hon'ble High Court. Therefore, while considering the right of tenant to purchase the land u/s 32G of the Act, firstly I have to consider the effect of earlier proceedings initiated by the landlady during her legal dis-ability for the claim u/s 32(1) of the Act. Admittedly, entire record & proceedings of the file which was decided in 1958 in respect of the right of possession of the landlord is not available in the tribunal. However, statement recorded by ALT has been mainly referred by the Ld.advocate for the Respondent contending that the admission given by the witness therefor is itself sufficient to establish the fact, that the landlady has exercised her right of possession during her legal dis-ability and same came to be rejected. For the above submissions the Ld.advocate has called my attention towards the cross-examination of the witness Sardar Munaf Patel. The Chief as well as cross-examination of this witness is at Page-55, 56, 59, 67, 69, 70 & 71 from ALT record. The relevant admission given by the witness is at Page-69 from the record of ALT, which runs as under-

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5. Suffice to say that the witness during the cross-examination categorically admitted the fact that after the landlady has become the occupant of the land and before the order of regrant she has exercised the right of possession u/s 31(1) of the Act, and same has been rejected. Ld.Adv.Smt.Jaikar for the Applicant strongly submitted that mere stray admitted in the cross-examination that is not sufficient to conclude the findings about the initiation of the proceedings and its disposal. I do not find strong substance in her submissions. On the contrary, in view of the evidentially admissions given in cross-examination and if the right of explanation is not exhausted by the maker thereof in form of re-examination, such admission is ever best piece of evidence to record the findings. In support of above observations I may keep reliance on the precedent laid down by our Hon'ble Supreme Court, in the case of **Vishwanath / Dwarkaprasad, AIR 1974-SC-117**. The proposition of law laid down therein can be summarized as under-

"Inview of Section-17 to 21 of the Act, admissions are substantive evidence by themselves though they are not conclusive proof of the matters admitted. The admissions are admissible evidence irrespective of the party making them was confronted with these admissions or not."

6. 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, evidentially admissions given by the Applicant before ALT is sufficient to record the findings that the landlady had exhausted the remedy u/s 31(1) of the Act, during her legal dis-ability and in that context the effect of Sec.32F(1) of the Act has to be construed. This also has been finally set at rest in several precedents, wherein our Hon'ble High Court, has ruled that the provisions of Sec.31(1) & 32F are not separate and if one of it, exhausted during the legal dis-ability the compliance of Sec.32F(1) does not remain in force. On this point Ld.advocate for the Respondent rightly called my attention towards the precedent laid down by our Hon'ble Supreme Court in the case of ***Sudam Kutwal / Shewantabai, (2006)7-SCC-200***. The proposition of law laid down therein can be summarized as under.

"Where a landlady / widow exercised her right of termination of tenancy and initiated the proceedings for possession for personal cultivation u/s 32F(1), then no right would survive u/s 31(3) to her or her successor-in-title to seek the remaining land for personal cultivation by giving notice of termination, in view of bar of Sec.31(C). Thus when Sec.31(3) cease to apply u/s 32F(1A) requiring the tenant to give intimation of his desire to exercise his right to purchase the land would also become inapplicable."

7. I have gone through the above precedent very carefully and do find that, inview of the fact of exercising the right of possession for bonafide cultivation during the period of legal dis-ability if established and proved, then the provisions of Sec.32F(1A) of the Act, becomes inapplicable. Therefore, in such case the tenant is not ever obliged to intimate the willingness to purchase the land after the death of landlady. Therefore, in the given set of facts, once the fact of initiation of the proceedings u/s 31(1) of the Act, has been proved non-compliance of Sec.32F(1A) of the Act, does not survive and no cause of action subsist for the landlord to seek possession on the default clause of Sec.32F(1A). With these observations, I answer the 'Point No.1 in negative.'

8. Point No.2&3: Ld.advocate for the Revision Petitioner Smt.Jaikar, strongly submitted that the tenant who has failed to intimate his willingness to purchase the land within the stipulated period from the date of death of landlady, his right to purchase has become ineffective. She has strongly submitted that there is no necessity to have an intimation on the part of successor-in-title of the widow to intimate the death of landlady to the tenant. In support of her submissions she relied upon the precedent laid down in the case of ***(i)Appa Magdum Vs. Akubai Nimbalkar, AIR-1999-SC-1963, (ii) Bakulabai Naikwadi Vs. Vithoba Bhagat, 2007(3) MhLJ-344***. The same issue was referred by the Hon'ble Supreme Court to Hon'ble Full Bench for reconsideration. In the recent precedent

while the matter was referred to Hon'ble Full Bench of the Hon'ble Supreme Court, re-considered the scope and applicability of the words used in Sec.32F(1A) of the Act, and the requirements of the intimation on behalf of the successor-in-title of landlady to the tenant, so as to start the limitation. In support of above observations, I may keep reliance on the precedent laid down by our Hon'ble Supreme Court in the case of ***Vasant Padave / Anant Sawant, 2019-SCC online-1226***, wherein Their Lordships have ruled as under:

"The words "of the fact that he has attained majority" which struck down and hold that successor in interest of a widow is obliged to sent an intimation to the tenant of cessation of interest of the widow to enable the tenant to exercise his right of purchase."

9. 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, same is applicable to the case at hand. The precedent laid down by our Hon'ble Supreme Court in Full Bench judgment, **earlier precedents in case of (i)Appa Magdum Vs. Akubai Nimbalkar, AIR-1999-SC-1963, (ii)Bakulabai Naikwadi Vs. Vithoba Bhagat, 2007(3) MhLJ-344, have been overruled.** Therefore, the successor-in-title of the widow landlady is ever under obligation to intimate the date of death of landlady, which has not done in the present case. On the contrary, it has become evident that that the successor-in-title of the widow landlady has issued notice dt.16/1/1997, for possession which shall be the date of knowledge for the tenant about the death of landlady, which has been received by the tenant and he has replied the same on 31/3/97 and 7/4/97 and thereby, expressed his willingness to purchase the land. Not only that, but the tenant has replied the said notice and thereby, by submitting reply he has shown his readiness and willingness to purchase the land u/s 32G of the Act. Once the intimation is given it is for the Mamlatdar to start from proceedings u/s 32G of the Act, without any further steps being taken by the tenant. Therefore, by following the Law laid down in the recent precedent by our Hon'ble Supreme Court (Full Bench), I hold that there is no evidence on the part of successor-in-title of the widow on the point that he has ever intimated the date of death of landlady to the tenant in possession prior to notice dt.16/1/97. Therefore, question of starting limitation of strict compliance of Sec.32F(1A) of the Act, does not survive. Thus, on this count of breach of condition embodied in Sec.32F(1A) of the Act, does not remained in force and the application moved by the successor-in-title by the landlady deserves to be dismissed. On these grounds the judgment & order passed by Ld.appellate tribunal, who has set aside the order of ALT being based on sound reasonings in support thereof does not call for interference therein through this Tribunal. With these observations, I answer the 'Point No.2 in affirmative & Point No.3 in negative' and proceed to pass the following order.

ORDER

The revision application stands dismissed.

The judgment & order of Ld.appellate tribunal i.e. SDO Wai, in Tenancy Appeal No.15/98, dt.9/7/99 is hereby confirmed.

The judgment & order passed by the Ld.trial tribunal i.e. ALT Wai in tenancy file No.32P/Sultanpur/185/98/Wai, dt.27/8/98, for possession of the disputed land u/s 32P of the Act in favour of the landlord 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.