

**BEFORE THE MEMBER, MAHARASHTRA REVENUE TRIBUNAL,
PUNE BEHC, PUNE**

No.NS/VII/5/89 (Remand)

1) Shri Yashwant Keshav Kulkarni, Applicants
D/H---
Shri.Narayan Yashwant Kulkarni,
D/H---
1a) Ulhas Narayan Kulkarni,
1b) Smt.Manjiri Sanjay Khanzode,
R/o.Amit Apartment, Gaon Bhag, Sangli.

2) Shri.Gajanan Yeshwant Kulkarni,
R/o. Opp.F.C.College, Shirole Chawl, Pune-4.

VS.

Babalal Ismail Mulani, Respondent
D/H---
Elahi Babalal Mulani,
R/o. Borgaon, Tal.Satara, Dist.Satara.

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

Appearance :- Adv. Shri J.P.Dhaytadak for Revision Applicants.
Adv. Smt.A.V.Tole for Respondent

CORAM : Shri M.M.Adtani, Member, M.R.T., Pune Bench, Pune.

DATED:- 17th MAY, 2016

JUDGMENT

1. These are the proceedings in remand pursuant to Hon'ble High Court's order dt.19/9/2006 passed in Writ Petition No.2441/1992 through which the Hon'ble High Court has allowed the Petition of the present Revision Applicant and has set aside the order dt.4/10/1991 passed by this Tribunal in review application No.7/90 and order dt.20/10/1989 of this Tribunal in original revision application No.5/89. Vide order dt.20/10/1989 this Tribunal had dismissed the revision application filed by present Revision Applicant against the order dt.10/1/1989 of the Sub-Divisional Officer (SDO) in Tenancy Appeal No.20/1979. The SDO vide his order dt.10/1/1989

had also dismissed the appeal of the present Revision Applicant filed against the order dt.30/9/1972 of the Tenancy Awal Karkun (TAK) in T.C.No.2/1972. Vide order dt.30/9/1972 the TAK had declared the present Opponents' predecessor as tenant on the suit land since prior to 1/4/1957. This Tribunal had rejected the review application No.7/90 and maintained its order dt.20/10/1989.

2. The Hon'ble High Court while setting aside the orders passed by this Tribunal in revision application & review application has remanded the case to consider the order passed by Dy.Collector & ALT in Sept.1963 which is annexed to the Petition at Annexure-A, through which it is already decided that the present Opponent's predecessor was not occupying the suit land as a tenant, nor as kabjedar but he was occupying the said land as a hired labour.

3. I have heard Adv.Dhaytadak for Applicants and Opponent Elahi Babalal Mulani in person in the remand proceedings and have gone through the case papers.

4. In remand proceedings the Advocate of the Applicant has filed the certified copies of Village Form No.7/12 of the suit lands right from the year 1952 till 1981 and photocopies of M.E.No.2557, 2577, 1854, 1775, 2341, Consolidation Extract of suit lands (new Gat No.246 and 487), copy of the certified copy of the order of Dy.Collector & ALT dt.15/9/1963 in T.C.No.12 u/s 32G in respect of the suit lands (old S.No.146 and 104/1) and the certified copy of the statement of the predecessor of the present Revision Applicant in those proceedings. Subsequently the Tahsildar has also submitted the original case papers of proceedings through which the order dt.15/9/1963 has been passed by the Dy.Collector & ALT No.1, Satara in respect of suit lands. This order of the Dy.Collector & ALT has not been rebutted by the Opponent in these remand proceedings. In arguments, Adv.Dhaytadak reiterated the contents of documents filed by him in support of his application. On going through this order I find that in these proceedings after recording the statement of Shri.Yashwant Keshav Kulkarni (predecessor of the present Revision Applicant) and on going through the receipts produced by him about payment made to the Opponent's predecessor Babalal Ismail Mulani as labour in 1957-58 and after giving due opportunity to the present Opponent's predecessor, has already held that Babalal Ismail Mulani was not cultivating the said land as a tenant; he was engaged as a labour by the present Applicants predecessor (owner of the land) and thereby has dropped the proceedings u/s 32G of the Tenancy Act. The receipts dt.2/7/1953 and 3/7/1953 is on page No.33 & 35 of the Lower Courts case papers clearly show that the Opponent's father was engaged as a labour on the suit land and not as a tenant.

5. Further on the basis of this order already a M.E.No.2577 is certified on 24/12/1963 by the Tenancy Officer clearly stating that, "ÖÖ»ÖÖ»Ö Æü •æúû -ÖÃÖæ-Ö ÃÖxü,üÆæü •Ö'Öß-Ö 'Ö•Öã,üß-Öê ¾Ö×Æü¾ÖÖ™üßYÖ †ÖÆüYÖ †Ö×Ö YµÖÖ'Öãêû Ö»Ö'Ö-32-Ö "Öê ÖúÖ'Ö ×-ÖÖúÖ»Öß ÖúÖœü»Öê." and thereafter even Village Form

No.7/12 of the year 1965-66 onwards show him as cultivating the said land as a labour. This order of the Dy.Collector & ALT and these documents are not rebutted by the present Opponent and further that this order dt.15/9/1963 of the ALT has not been challenged in any appeal proceedings so far and therefore it has attained finality and therefore matter has become res-judicata in this regard. Probably because the present Applicant did not file these case papers before the TAK in proceedings before him vide case No.2/72, that the TAK came to pass the order declaring Opponent to be tenant on the suit land. However even if the present Applicant had not filed these case papers before the TAK then, TAK should have verified his Tahsil Office record properly and even M.E.No.2577, certified on 24/12/1963 through which it was already held that Babalal Ismail Mulani is not tenant on the suit land and that the proceedings u/s 32G in this regard are already dropped. However now that the present Applicant has produced all these documents firstly before the Hon'ble High Court and after going through these proceedings in case No.12/63, it has become clear that the Opponent is not tenant on the suit land and that he has no right to purchase it u/s 32G of the Tenancy Act and that the matter has already become res-judicata in this regard. In view of this it has become necessary to set aside the earlier order passed by this Tribunal in review application No.7/90 and the preceeding order of this Tribunal in revision application No.5/89, SDO's order in Tenancy Appeal No.20/79 and TAK's order in T.C.No.2/72. I therefore pass the following order.

ORDER

1. The revision application is allowed.
2. The order dt.10/1/1989 passed by the Sub-Divisional Officer, Satara Sub Dn., Satara in Tenancy Appeal No.20/1979 & TAK Satara's order dt.30/9/1972 in T.C.No.2/1972 are set aside.
3. The order dt.4/10/1991 of this Tribunal in review application No.7/90 and order dt.20/10/1989 of this Tribunal in revision application No.5/89 stand set aside as per the Hon'ble High Court's order dt.19/9/2006 passed in W.P.No.2441/1992.
4. No order as to costs.
5. The stay / status-quo granted if any in this case stands vacated.
6. Inform both the parties with copy to Tahsildar & Sub-Divisional Officer and file the case.