

**BEFORE THE DESIGNATED MEMBER, MAHARASHTRA REVENUE TRIBUNAL,
BENCH AT PUNE.**

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

No.SH/IX/8/1987

Shri Jagannath Dhondiba Shinde
D/H—

Shri.Popat Jagannath Shinde & ots.,
R/o.Khadkoli, Po.Chumb,
Tal.Barshi, Dist.Solapur.

.....Applicants

VS.

Shri.Gajendra Pandhari Shinde & otrs.,
R/o.Khadkoli, Po.Chumb,
Tal.Barshi, Dist.Solapur.

.....Respondents

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

Appearance :- Adv. Shri J.P.Dhaytadak for Revision Applicants.
Respondents absent though duly served

DATE:- 30th MARCH, 2019

JUDGMENT

Being aggrieved by the judgment & order passed by Ld.appellate tribunal i.e. Asstt.Collector, Solapur Division, Solapur (hereinafter referred as the "appellate tribunal") in Tenancy Case No.28/1985, dt.29/1/1987, the aggrieved purchaser of the disputed property 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 giving rise to the present revision application can be summarized as under.

2. The original disputed lands were the subject matter of the Tenancy Act. On 16/3/1961 the landlord has sold the disputed land to the tenant in possession through registered sale-deed on 16/3/1961 by private sale. Thereafter, the tenant in possession who has purchased the disputed land by way of private sale, sold the same to the predecessor-in-title of the present

Applicant under a registered sale-deed dt.29/7/1961. Thereafter on 21/5/1984 the Respondent No.1 filed an application before the tenancy tribunal u/s 84C of the Act, for restoration of possession. The matter has been decided by ALT in tenancy file No.3/84/84C/Khadkoni by order dt.27/5/85, and thereby, dismissed the relief of restoration recording the finding that the disputed transfer does not come within the ambit of Sec.43 of the Act. The aggrieved original Applicant has taken the matter before Ld.appellate tribunal. Tenancy Appeal No.28/85 came to be allowed on merit by order dt.29/1/87, whereby, the Ld.appellate tribunal has held that the disputed transfer comes within the ambit of Sec.43 of the Act, and same being effected without previous permission sale-deed dt.29/7/61 declared as invalid. Being aggrieved by the said order the purchaser through disputed sale-deed dt.29/7/61 has preferred the present revision application.

3. Matter being petty old and Respondent being not interested in the matter, the proceeding has been decided ex-parte against them. Even on the date of hearing they were absent when called. Hence, heard Ld.Adv.Shri.J.P.Dhaytadak for the Revision Petitioner at length. After hearing the submissions made by advocate for the Revision Petitioner and after perusing the record & proceedings before 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 transfer effected by registered sale-deed dt.29/7/61 hit by the provisions of Sec.43 of the Act?	Negative
2. If not, whether the proceeding initiated in the year 1984 initiated by the aggrieved party within a reasonable time? If not, what is its effect?	Does not survive
3. Whether the judgment & order passed by the Ld.appellate tribunal is proper, legal & correct? If not, whether it calls for interference therein and upto what extent?	No. As per final order, set aside.

Reasons

4. **Point No.1,2 &3** being mixed with each other required to be decided by common discussion. Therefore, at first I may state here that while initiating the proceedings at the instant of the Respondent No.1, the Ld.trial tribunal has considered the effect of earlier transfer dt.16/3/61 and conjoint effect thereof against disputed sale-deed dt.29/7/61. Admittedly, the first

transfer dt.16/3/61 is in between the landlord & tenant in possession at the material time. Therefore, such transfer effected comes within the ambit of Sec.64(2) r/w Sec.84(B) of the Act, and not directly as per Sec.43 of the Act. Admittedly, the transfer dt.16/3/61 is in between the landlord and tenant and that is by private sale. Therefore, same is not governed by the restricted transfer u/s 32G r/w Sec.32M of the Act. In short, neither the transfer dt.16/3/61 is ever comes within the ambit of Sec.43 of the Act, nor the legality of subsequent transfer can be impeached on the ground of validity for want of permission. In support of above observations I may keep reliance on the precedent laid down by our Hon'ble High Court, in the case of ***Tatya Detha / Madhavdas Maysurkar, 2009 ALL MR(1)-598.***

5. The proposition of law laid down in the above precedent certainly helps me to hold that, *"if the transfer is effected in between the landlord & tenant interse by private sale, same does not have an effect of restrictions on the right of transfer if at all which has to be so, it can be regularized by keeping in mind the provisions of Sec.64(2)(a)(i) of the Act"*. Therefore, in view of the facts and circumstances on record, it has become evident that the disputed transfer dt.29/7/61 is not governed by Sec.43 of the Act, as earlier transfer is not within the ambit of Sec.32G r/w Sec.32M of the Act. Therefore by following the Law laid down in the above precedent, I hold that the Ld.trial tribunal i.e. ALT has rightly interpreted the Law or provisions of the Law and directed the purchaser to pay the penalty of Rs.1/- as contemplated in Sec.64(2) of the Act, and get the transfer regularized. Sum and substance, the judgment & order passed by Ld.appellate tribunal does not sustain in eye of Law and deserves to be set aside by interfering therein at the hands of this Tribunal within its limited revisional jurisdiction u/s 76 of the Act. With these observations, I answer the 'Point No.1 in negative, Point No.2 as does not survive & Point No.3 as per final order' and proceed to pass the following order.

ORDER

The revision application is hereby allowed.

The judgment & order passed by Ld.appellate tribunal is hereby set aside and the judgment & order passed by ALT is hereby confirmed.

The revision petitioner is hereby directed to comply the said directions given by Ld.trial tribunal in strict sense and get the transfer regularized.

No order as to costs.

R&P received from SDO Solapur be sent back immediately.

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