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

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

No.KP/5/1999

Shri. Shivappa Gurappa Shintre,
D/H----
1) Sadashiv Shivappa Shintre,
2) Manohar Shivappa Shintre
3) Ishware Shivappa Shintre
4) Vilas Shivappa Shintre
5) Maharudra Shivappa Shintre
D/H---
A) Smt. Geeta Maharudra Shintre
B) Shri. Sangram Maharudra Shintre
C) Miss. Supriya Maharudra Shintre
All R/o. Anur, Tal. Kagal, Dist. Kolhapur
6) Smt. Neelabai Balappa Khombare
7) Smt. Malutai Baburao Bellad
8) Smt. Shrimabai @ Shrimantibai Shivappa Shintre
D/H---already on record as Applicant No. 1 to 4
and legal heirs of Applicant No. 5, Applicant No, 6, 7.
R/o. Annur, Tal. Kagal, Dist. Kolhapur .... Applicants
(Original Applicants)

VERSUS

1) Sitaram Krishna Mang, Major,
D/H--- Shri. Shivaji Sitaram Mang
D/H---
A) Smt. Sushila Shivaji Mang (Mane)
B) Shri. Ramchandra Shivaji Mang (Mane)
C) Shri. Santosh Shivaji Mang (Mane)
D) Shri. Dattaray Shivaji Mang (Mane)
All R/o. At Post. Kurli, Tal. Chikodi,
Dist. Belgaon, - Karnataka State
E) Sou. Sujata Suresh Chavan
R/o. at Post Pernoli, Tal. Ajara, Dist. Kolhapur.
2) Dattu Gopala Mang, Major,
D/H---Sou.Malan Annappa Kengare
D/H---
A) Shri. Madhukar Annappa Kengar
B) Shri. Shivaji Annappa Kengar
C) Shri. Annappa Bachharam Kengar

All R/o. 1550, 'E' Rajarampuri,Lane No. 3,
At Post & Tal. Dist. Kolhapur.

3) Mahadu Janaba Mang, Major,
D/H---

A) Shri. Baburao Mahadu Mang (Mane)

B) Shri. Sattappa Mahadu Mang (Mane)

C) Shri. Tatoba Mahadu Mang
All R/o. At Post – Kurli, Tal. Chikodi,
Dist. Belgaon, Karnataka State

4) Dadu Rama Mang, Major,
D/H---

A) Shri. Kerba Dadu Mang (Mane)

B) Shri. Vilas Dadu Mang (Mane)
Both R/o. At Post – Kurli, Tal. Chikodi,
Dist. Belgaon, Karnataka State - .... Respondents
(Original Opponents)

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

Appearance :- Adv. Shri J.P.Dhaytadak for Revision Applicants.
Adv. Shri B.B.Bhargude for Respondents

DATE:- 31st DECEMBER, 2016

JUDGMENT

1. The applicants / aggrieved tenant have presented the present revision application by invoking the provisions of Sec.76 of B.T.& A.L.Act, 1948 (hereinafter referred "the Act") against the judgment & order passed by the appellate tribunal i.e. Sub-Divisional Officer, Karveer Sub Dn., Kolhapur (hereinafter referred as the "SDO") in Tenancy Appeal No.11/94, rejecting the application for fixation of price u/s 32G of the Act. Parties hereinafter referred in the same sequence and chronology in which they were referred before the ALT Kagal, as the applicants or the respondents as the case may be. The facts giving rise to the present revision application can be summarized as under.

2. The land more particularly described in para-1 of the application bearing Gat No.181, adm.1H.21R. situated at Village Anur, Tal.Kagal, originally owned by the forefathers of the Opponent. The father of the applicant was the tenant in possession of the said land since 1952 onwards. On the *Tillers Day*, the name of the father of the applicant was entered as *protected tenant* entered in revenue record through M.E.No.769. The applicant has specifically contended that though the tenant was in actual possession of the suit land on the *Tillers Day*, ALT Kagal

has failed to initiate the proceedings u/s 32G of the Act. So also there is no proceeding as such ever conducted by the authority so as to declare the sale ineffective as per Sec.32G of the Act. Therefore, the applicant has moved the present application on 12/9/89 to determine price of the land and to issue the certificate accordingly by accepting the price of the land in lump-sum.

3. Initially the proceedings conducted before the trial tribunal through the judgment & order dt.30/4/90 and thereby, proceedings were dropped for the reasons recorded therein. The aggrieved tenant has preferred tenancy appeal No.25/90 against the said order which came to be allowed by judgment & order dt.3/2/92. While allowing the appeal appellate tribunal found it necessary to have a re-trial of the proceedings and remanded the matter for fresh enquiry. After remand the matter was again decided on merit in presence of both the parties and ALT Kagal passed the judgment & order dt.31/3/94 whereby fixed the price of the land by allowing the application moved by the tenant and directed to issue certificate accordingly after receipt of the price. Being aggrieved by the said judgment & order the aggrieved landlord went in appeal through T.A.No.11/94 which came to be decided by judgment & order dt.31/12/98 and thereby, allowed the appeal and set aside the order of the trial tribunal, whereby the price was fixed u/s 32G of the Act. While deciding the T.A.No.11/94 the appellate tribunal come to the conclusion that the proceeding moved by the tenant for fixation of price hit by the provisions of res-judicata, in view of the judgment & order passed in earlier proceedings in file No.53/62, dt.21/11/62, whereby the sale has been already declared ineffective. Being aggrieved by the said judgment & order the aggrieved tenant has preferred the present revision and thereby, challenged the legality and propriety of the judgment & order passed by the SDO within the ambit of the provisions of Sec.76 of the Act. While challenging the judgment & order of appellate tribunal the applicant has specifically contended that the said judgment, is contrary to law and so also the appellate tribunal has failed to determine the material facts which are duly proved on record in respect of alleged illegal surrender and assertion of possession by the landlord over the suit property.

4. Heard Ld.Adv.Dhaytadak for the applicant-tenant / Revision Petitioner & Ld.Adv.Bhargude for the Opponent-landlord /Respondent at length. Perused the R&P from the tribunals below. After considering the facts put forth, evidence laid, documents proved and submissions made before this Tribunal at length, following points arise for my determination. I have recorded my findings with reasons thereon as under :-

	Points	**Answer**
1.	Whether the applicant / tenant has proved that he was and is still tenant in possession of the suit property since prior to the *Tillers Day* till this date ?	Yes
2.	Whether the judgment & order passed by the appellate tribunal reversing the judgment of trial tribunal is legal,	No

	correct on the legal issues involved in the matter, particularly on the point of applicability of Sec.32G and plea of surrender put forth by the landlord ?	
3.	If not, whether the judgment & order under revision calls for interference therein as prayed for ?	Yes
4.	What order ?	As per final order

Reasons

5. While deciding the revision application at hand on merit, at first I may refer certain undisputed or otherwise duly proved facts, which do not call for interference therein through the revisional court which are as under :-

The Opponents are the landlords. Father of the applicant was the tenant in possession on the *Tillers Day* i.e. 1/4/1957. Pending the revision the Opponent / landlords have produced copy of M.E.No.769 which came to be certified on 6/6/56 which indicates that Shivappa Shintre certified as *protected tenant* over the suit property prior to 1/4/1957 and his possession since thereafter continuously supported by entries in the column of cultivation of the suit land from 1956-57 onwards. The Opponents have also not disputed this fact seriously in the entire *lis.* On this touchtone suffice to say that despite of the matter reached upto appellate tribunal in first round and undergone the fresh trial, after remand by appellate tribunal, the Opponents have not filed their written say while challenging the right of the present applicant on various grounds available to them. As such the entire trial of the Opponents is without pleadings on record though they have cross-examined the applicant and also made themselves available for the purpose of cross-examination. In short, above referred mutation entry supported by entries in the column of cultivation and rent receipts on record filed by the applicant which are at page-129, 131, 133, 135 & 137 from lower courts record which were duly referred in the trial even at the stage of cross-examination sufficiently proved its existence and truthfulness of the contents. Existence of those rent receipts not seriously disputed. Therefore, certainly presumption of 30 years old document at the stage of hearing is available to those receipts, which can be looked into so as to support the revenue entries in favour of the applicant. Suffice to say that by ample evidence in form of pleadings, revenue record and rent receipts the applicant / tenant has proved that he was tenant in possession of suit property since prior to *Tillers Day* i.e. 1/4/1957.

6. Now at this stage for the first time before revisional court without any specific pleadings the landlords have tried to urge that the land in dispute is Waje

Inam Land and therefore, provisions of Sec.32 to 32R of the Act are not ever applicable to the suit property. In support thereof the landlords have referred certified copy of Inam Register, which is at page-47 in the lower courts' record. Without disputing the correctness entry of the suit property so far as its nature Waje Inam Land as it reflects from the said extract, on the legal touchtone, objections as regard non-applicability of the Tenancy Act to the suit property does not sustain in eye of law. At the most effect of "*Deemed Purchase" and provisions* relating thereto made in the Act may postpone its effect till the regrant order has been passed in favour of the occupant thereof or otherwise till the land remains vested with the State and nothing more. On this touchtone the advocate for the applicant / tenant rightly called my attention towards the precedent laid down by our Hon.High Court. In support of his submissions Ld.Adv.Dhaytadak kept his reliance on the following precedents.

(i) Pradeeprao Patil Vs. Sidappa Hemgire, 2004(3) MhLJ-75

(ii) Rangnath Vadar Vs. Bhagatshing Kotwal, 2003(2) MjLJ-381

The preposition of law laid down in both the precedents can be summarized as under :-

> "*When the Watan land was lawfully leased by the landlord in favour of the tenant much prior to 1/4/1957 and the said lease was subsisting on the appointed day, the question of creating fresh tenancy by the landlord after regrant does not arise. Unless the land is regranted after the resumption provisions of B.T.& A.L.Act, particularly Sec.32 to 32R not applicable and its applicability stands postponed till the order of regrant."*

I have gone through the above precedents very carefully and do find that the preposition of law laid down therein certainly helps to hold that, admittedly when regrant is not disputed, applicability of the Act shall follow to the suit land. Similarly, once the fact of regrant is established the applicability of Sec.32 to 32R shall come into force.

7. Now the question of the effect of tenant in possession on the *Tillers Day* and applicability of Sec.32G shall have to be considered in the light of the facts of the case. Admittedly, herein this case the applicant/ tenant has moved the Tribunal by moving an application dt.12/10/89 for the first time for issuance of certificate u/s 32G. In that context I may stage here that once the right of at / tenant as *protected tenant* in possession on the *Tillers Day* is established, no obligation has been casted upon the tenant to move any proceedings, but, it is for the Tribunal to enquire in the matter in detail before grant of such certificate within the limits of this section suo-moto. Admittedly, though there is a reference of earlier proceedings of 1962 in respect of the said property. There is no documentary evidence about the existence of such proceedings. What shall be the effect of earlier proceedings as referred in the judgment of appellate tribunal, that will be considered lateron, but for the purpose of nature of enquiry contemplated u/s 32G of the Act, suffice to say that a foremost duty is caste upon the Tribunal to enquire

into the matter on several aspects, which are laid down by our Hon.High Court while deciding the following two precedents.

(i) Mahadeo Mali v/s Gajanan Kulkarni.(1998)9 SCC 716.
(ii) Krishana v/s Kashiram 2005 (1) ALLMR 693.

The preposition of law as regard the scope of enquiry contemplated under this Section can be summarized as under –

> *"Tahsildar should have gone into the merits of the case on the basis of record and come to the conclusion for the compliance of (i)effective notice to all interested persons including tenant(ii)recording of statement of tenant on the point of willingness or refusal (iii)refusal or absence of tenant should have to be recorded by the tribunal in writing with order in declaratory form to make the sale ineffective."*

8. Admittedly, there is no record as such available with the office of the Tribunal, wherein such requirements have been strictly complied with. Even otherwise by perusing the entry which is mainly relied by the advocate for the landlord which found the place in Inam Extract at Sr.No.82 has no much more evidential value as it has not been duly verified by the authority, who has passed such orders, on which ground the purchase has been declared ineffective. The formal words are appearing in the entry as under –

> "Ineffective purchase 110-53/62, dt.26/11/62, entry has been effected in Tenancy Register".

9. However, said entry is not duly verified or the extract nowhere discloses the authority who has been passed such order. Except file No. & date of order nothing is on record. In short, there is no "reasoned order" for declaring the sale ineffective. On this touchtone, observations made by appellate tribunal while setting aside the order of ALT amply suggest that the purchase has been declared ineffective merely on the ground the disputed land found Waje Inam and nothing more. As observed para-supra it has been duly proved that the merely because the property being Inam Land, sale cannot be declare ineffective, but its effect can be postponed till the date of order of regrant and nothing more. On this touchtone finding of appellate tribunal setting aside the order of ALT does not sustain in eye of law.

10. Now, at this stage Ld.Adv.Bhargude for the landlord / respondent strongly submitted that the decision rendered in file No.53/62 has reached to its finality and merely record is not available, the landlord cannot be blamed if the record is not traceable, presumptive value attached to the extract of the tenancy shall have to be followed to record, conclusion of finding on the point of res-juidicata in favour of the present respondent / landlords. I do not find strong substance in these submissions. The provision of principle of res-judicata is a significant statutory

provision in the Code which restrain the party to re-open the matter, which has been concluded finally by the Court having jurisdiction over the subject matter and that too, the matter on merit. In order to substantiate the plea of res-judicata burden on the party, who asserts it and same cannot be reviewed merely by raising the plea or can be rest upon the record which is not available. On the contrary, it was for the party asserted to plead the fact of applicability of res-judicata sufficiently and to establish the same by producing the pleadings put forth in both the pleadings subject matter involved therein, reliefs sought therein and the authority who pass such order and its jurisdiction to pass such order. Vague assertion is not sufficient to render the plea of res-judicata in favour of a particular party. In support of above observations I may keep reliance on following two precedents.

(i) "Sripati and others V/s. Ranulal, 1971, Mh.L.J., page 265

(ii) "2007(1) Mh.L.J., page 383"

wherein Their Lordships have ruled as under :

> *"Party pleading res-adjudicate must place pleadings of both parties in former suit before the Court in subsequent suit. Absence of such pleadings is fatal to plea of res-adjudicate. Mere filing of copy of judgment of former suit is not sufficient."*

11. Herein this case, neither the Opponent / landlords have placed their pleadings on record raising the plea of res-judicata. No detail judgment is available on record to consider the points dealt with and the reasons on which the purchase has been declared ineffective. In short, there is no *iota of evidence* on the point of effective notice to interested persons, recording of statement on the point of willingness or refusal and if the sale is declared ineffective on the ground of refusal or absence of the tenant, there is no availability of statement of tenant recorded by the Tribunal in writing to that effect. Therefore, I am of the view that the mere presence of entry of previous proceedings is not sufficient to conclude the effect of conclusions recorded in earlier proceedings of which existence and reliability is not duly proved. On this touchtone, furthermore I may state that in order to substantiate such plea the decision must be rendered on merit and not a facts only. Mere entry is not sufficient to that effect. In support of above observations, I may keep reliance on the precedent laid down by Hon.Supreme Court in case of *The City Municipal Council, Bhalki Vs. Guruappa, AIE-2015-SCC-3826.* The preposition of law laid down therein can be summarized as under :

> *"For bar of res-judicata in subsequent proceedings the former proceedings must have been* ***decided on merits*** *on the same substantial questions both on facts and in law that would arise in subsequent proceedings."*

12. Herein this case, there is no *iota evidence* as to the decision rendered in the earlier proceedings on merit on the question of facts and law, which have arisen in the present proceedings. Therefore, the findings recorded by the appellate tribunal while setting aside the order of ALT on the principle of res-judicata does not sustain in eye of law.

13. Last, but not the least, point raised by the advocate for the Opponent / landlords is that of surrender. In support of plea of surrender made by the present applicants father in favour of the Opponents, they have placed their reliance on written agreement dt.6/2/86, which has written on Rs.5/- Non-judicial Stamp executed between the landlord and tenant, in presence of Panchas. Admittedly, the Opponent landlord has not placed any pleadings in support of the existence, execution and truthfulness of this document by substantive pleadings. Secondly, Opponent while giving statement on oath has nowhere referred existence of said document in his chief-examination. Even otherwise execution and truthfulness of this document has not referred by Opponent in his deposition. No independent witness has been examined to prove the existence, execution and attestation of the said agreement. This document has not seen the sunlight before the competent authorities in proper form at any time. Even otherwise execution of the said agreement has not took place in present of Mamlatdar, nor Mamlatdar has verified the truthfulness of this document during the course of trial before ALT or before appellate tribunal. In short, on facts the existence, execution and truthfulness of said document has not been duly proved as required by law. Therefore, same should not take place of evidence to prove the fact of valid surrender. Secondly, it is pertinent to note that law nowhere permits the surrender at any cost subsequent to 1/4/1957 against the *Deemed Purchase* after the date of *Tillers Day* . Secondly, such surrender is even recognized as invalid, if not verified before the Mamlatdar by giving opportunity to the executants, in what circumstances he has surrendered his rights. Not only that, but in any case the land which has been already vested with the tenant due to the implication of Sec.32G on the *Tillers Day* , it is subsequent surrender, is ever invalid and ineffective in eye of law. In support of these observations advocate for the applicant rightly called my attention towards the following precedents.

(i) Laxmanrao Stardekar v/s Bapu Pawar1992(1) Mh.L.J.333
(ii) Vasu Sutar v/s Ganpati 1992 (1) Mh.L.J. 730.
(iii) Dattu Patil v/s Javahar Shah 2006 (1) Mh.L.J.776

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

> *"In order to have valid surrender of tenancy by the tenant ,(i) it must be in writing (ii)it must be verified before the Mamlatdar(iii) while making such verification, the Mamlatdar must satisfy himself in regard to two things ie. (a)tenant understands the nature and consequences of the surrender and(b) that is voluntary.(iv) the Mamlatdar must endorse his findings as to such*

satisfaction upon the document of surrender. Such surrender starts taking effect only from the date it is verified and not from any time there before."

14. I have gone through those precedents very carefully and it found that the preposition of law laid down therein certainly helps me to hold that there is no valid and effective surrender proved as against the rights of the *protected tenant* who found in possession of the suit property on the *Tillers Day.* The defense of the Opponent / landlord while defending the claim of certificate in favour of the tenant also equally defeats on this issue also.

15. Now, only the question remains for my consideration as to who is in possession as on the date of application. It has been amply proved on record that there is no proceedings as such for the recovery of the possession against the tenant in possession. No executable order has ever passed against the applicant / tenant by the Competent Authority under the Act for such dis-possession. There is no documentary evidence the manner in which the tenant was dis-possessed by the landlord. Therefore, mere entries in column of cultivation will not take the place of evidence on the point of valid dis-possession of the tenant, so as to defeat, object of the Statute. In support of above observations I may keep reliance on the precedent laid down in the case of *Laxman Edike v/s Vishwanath Chemte, 2007 (1) ALL MR 36, wherein Their Lordships have ruled as under :-*

"It is well settled that if the case of personal cultivation is not made out then the continuation of possession can be presumed unless the dispossession is alleged and proved irrespective of the fact of absence of entries in column of cultivation for some year. The powers of revision entrusted to MRT u/s 76 of the said Act are practically identical with the second appeal powers of the Hon.High Court u/s 100 of the Code."

16. I have gone through the above precedent very carefully, which guides me to hold that herein this case, consistent entries in favour of the tenant against whom the plea of dis-possession is not sufficiently established. Mere absence of entry or entry in the name of landlord will not make them available to assert the plea of possession over the suit property. Not only that, but the decree passed in RCS No.19/90 challenged in form of appeal and matter was remanded for fresh trial. However, when the matter went up to Hon.High Court through Civil Writ Petition No.4993 of 2008, the Hon.High Court has observed that when the remand order passed by the appellate court, which has been confirmed already while deciding the appeal against order dt.17/7/08, the effect of such order will be that, the Temporary Injunction operating against the Petitioner / landlords shall remain in force till the disposal of RCS No.19/90, till its disposal, which is still pending after the remand. The observations made in the above said Civil Writ Petition guides me to hold that the order of Injunction is still in force as against the landlord / Opponents.

17. Inview of above discussion I do find that while passing the judgment & order as a court of first instance as ALT, Tahsildar Kagal has taken utmost care on the point of facts and law involved in the matter and passed the appropriate legal order in respect of issuance of certificate u/s 32G of the Act in favour of the applicant / tenant. In that light, order passed by appellate tribunal, reversing the said judgment & order of ALT does not sustain in eye of law. Therefore, inview of these circumstances there is no alternative other than to invoke the powers of revision u/s 76 of the Act, which vest with the Tribunal and to restore the order of ALT by allowing the revision application. With these observations, I answer the Point No.1 & 3 in affirmative, Point No.2 in negative, Point No.4 accordingly & proceed to pass the following order.

ORDER

The revision application is hereby allowed.

The judgment & order passed by the appellate tribunal i.e. SDO Karveer in tenancy appeal No.11/94, dt.31/12/98 is hereby set aside & the judgment & order passed by the ALT Kagal in file No.32-G/Anur/82, dt.14/2/94 is hereby confirmed.

No order as to costs.

R&P called from the tribunals below be sent back.

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