

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

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

No.SH/II/1/2017 (Review)

Sadhu Mahadu Koli,
D/H---

- 1) Ramchandra Sadhu Koli
- 2) Mohan Sadhu Koli
- 3) Sukhdeo Sadhu Koli
- 4) Subhadrabai Dnyanu Bhalerao
- 5) Vithabai Shankar Parchande

D/H---

- a) Kundlik Shankar Parchande
- b) Namdeo Shankar Parchande
- c) Shivaji Shankar Parchande
- d) Pandurang Shankar Parchande
- e) Dnyeshwar Shankar Parchande
- f) Shobha Pandurang Waghmare

All R/o. Gursale, Po.Venunagar, Tal.Pandharpur, Dist.Solapur

- 6) Ambubai Bhiku Koli

No.1 to 3 & 6 R/o.Kadalas, Tal.Sangola, Dist.Solapur.

.... Applicants

VS.

- 1) Siddheshwar Krishnarao Kadam
- 2) Balbhim Krishnarao Kadam

D/H---

- a) Smt.Vijayananda Balbhimrao Kadam
 - b) Sangramsinh Balbhimrao Kadam
- Both R/o.Sarkar Kadam Saheb Ka Wada,
Mama Ka Bazar Lashkar, Gwalior (Madhya Pradesh)

- 3) Pradhamanrao Krishnarao Kadam
- No.1 & 3 through POA—Vilas Balbhim Ligade,
R/o.Kadalas, Tal.Sangola, Dist.Solapur.

- 4) Virupaksha Pradumnarao Kadam

R/at: Kadam Saheb Ka Wada,
Mama Ka Bazar Lashkar.Gwalior,
(Madhya Pradesh)

- 5) Mr. Chandrkant Jyotiram Pawar

R/at: Kadalas, Tal. Sangola, Dist. Solapur

- 6) Mr. Indrajeet Siddheshwarrao Kadam

R/at: Kadam Saheb Ka Wada,

Mama Ka Bazar Lashkar.Gwalior, (Madhya Pradesh)

7) Mr. Yashwant Chandrashekhar Pawar

8) Mr; Abhijeet Chandrashekhar Pawar

Both are minor acting through their Guardians

A. Mr. Jyotiram Pralhad Pawar

B. Mrs. Vithabai Jyotiram Pawar

R/at: Kadalas, Tal. Sangola, Dist. Solapur

9) Dr. Sayaji Raosaheb Gaikwad

R/at: Kadalas, Tal. Sangola, Dist. Solapur

10) Mrs. Jayshri Chandrakant Pawar

R/at: Kadalas, Tal. Sangola, Dist. Solapur

.....Respondents

Review Application U/s 322 of
M.L.R.C.1966

Appearance :- Adv. Shri Abhang for Revision Applicants.
Adv. Shri Shinde & N.P.Patil for Respondents

DATE:- 30th JUNE, 2017

JUDGMENT

Being aggrieved by the judgment & order passed in revision application No.TNC/REV/20/2007, DT.7/1/2017, the aggrieved Revision Petitioner / tenant has preferred the present review application, by invoking the provisions of Sec.76 of B.T.& A.L.Act, 1948 (hereinafter referred "the Act") r/w Sec.315 & 322 of M.L.R.C.1966, on the grounds more particularly set out of review application. Facts giving rise to the present review application can be summarized as under.

2. Dispute between the Petitioner & Respondent in the capacity of tenants & landlord, in respect of the disputed land i.e. Gat No.160 situated at Village Kadlas, Tal.Sangola is going through file No.ALT/SR/9/90. The said proceedings decided by ALT Sangola, through his judgment & order dt.30/4/91 and thereby, declared the sale of disputed land in favour of the tenant as ineffective. Subsequent thereto same proceeding has been continued through registration No.1/91 for the proceedings u/s 32P of the Act. The said proceedings at first decided by the ALT by order dt.2/8/2005 and held that the landlord is entitled for possession of the tenanted land as by order dt.30/4/91 in the said file No.ALT/SR/9/90, the sale in favour of the tenant was declared ineffective and in passage of time it has reached to finality.The said proceedings carried before the Ld.appellate tribunal through

appeal No.8/2005 by the unsuccessful tenant, which came to be decided on merit by judgment & order dt.28/12/2006. Being aggrieved by the said judgment & order passed by the Ld.appellate tribunal, the aggrieved tenant had preferred revision No.20/2007 before this Tribunal. The said revision application came to be decided on merit after hearing advocates representing the parties, by referring the R&P from the tribunals below on the point further relief granted to landlord u/s 32P of the Act. After considering the submissions made and verifying the record from the tribunals below, this Tribunal come to the conclusion that the judgment & order passed in earlier file No.ALT/SR/9/90, reached to its finality and thereby, the Tribunal does not call for interference within its revisional jurisdiction with the concurrent findings recorded by the tribunals below on the point further relief granted to landlord u/s 32P of the Act and thereby, dismissed the revision application with *reasoned order* dt.7/1/2017.

3. Being aggrieved by the said judgment & order passed by this Tribunal, the aggrieved tenant has preferred the present review petition on the grounds more particularly set out in review application. Some and substance of the grounds set out in review application are twofold that the (i) Tribunal has not considered the documentary evidence on record which was filed before the Tribunal to establish the holding of the landlord, which is ever excess, so as to challenge the order u/s 32P of the Act and contended that the order passed by this Tribunal is perverse and came to be passed in ignorance with the record before the Tribunal. (ii) The Tribunal while deciding the revision application has failed to consider the legal effect of death of the party during the proceedings and the judgment & order passed by ALT being nullity, does not sustain in eye of law, as the judgment has been passed after the death of the party i.e. the original tenant without bringing his LRs on record and on this ground also the review application deserves to be allowed.

4. As against this, the advocate for the Respondent / landlord at first strongly submitted, that the review application moved is not maintainable in eye of law. As well as the subsequent purchaser of the disputed land strongly submitted that the grounds made out in the review application does not sustain in eye of law and not sufficient to invoke the review jurisdiction of this Tribunal to correct the judgment & order, which is under review. In addition thereto, the advocate for the Respondent strongly submitted that the reasonings recorded by this Tribunal are supported by record and also self-explanatory from the observations made in para-8 & 9 of its judgment. Therefore, no case thus sustain to invoke the powers of review and same deserves to be dismissed.

5. After considering the full-fledged hearing and submissions made by advocates represented the parties, following points arise for my determination. I have recorded my findings with reasons thereon as under :-

Points

Findings

1.	Whether the review application before the Tribunal is maintainable ?	Affirmative
2.	Whether the applicant has succeeded in establishing error apparent at the face of record, while deciding the matter of revision application No.20/2007 ?	Negative
3.	If not, what order ?	As per final order

Reasons

6. Point No.1:- The advocates representing Respondents / landlord as well as subsequent purchaser Shri.Shinde, strongly submitted that the review application moved is not maintainable within the statutory provisions made under Mamlatdar's Courts Act, 1906. As against this advocate for the Review Petitioner strongly submitted that the issue in respect of the powers of review with the Tribunal and its maintainability in the given form has set at rest by the Full Bench or by the precedent laid down by our Hon.High Court. In support of his submission he has kept his reliance on the precedent laid down by our Hon.High Court *in the case of Raghunath Bokil Vs. Vitthal Limbhorji, 2006(6) Mh.L.J.-865* (FB). I have gone through the above precedent carefully. While deciding the matter referred before the Full Bench and while over-ruling the law laid down by earlier Bench in the case *reported in 1986 Mh.L.J.-520*, by upholding the rule laid down by our Hon.High Court, *in the case of Genu Shinde Vs.Chandrakant Kotulkar, 1999(1) Mh.L.J.-235*. Our Hon.High Court has ruled as under:

Upon re-organization of States and the State of Maharashtra having come into existence w.e.f. 1/5/1960. MRT Act, 1957 was repealed by the passing of by replacing it by MLRC, 1966, wherein Chapter-XV ----- to be introduced, wherein the provisions for functioning of MRT and its powers have been specifically laid down, it has made clear that the provisions of Sec.322 from the Code are self-explanatory, as to how and when the Tribunal can exercise the power of review either suo-moto or on the basis of application moved by the aggrieved parties".

7. I have gone through the above precedent very carefully and do find that the preposition of law laid down therein certainly helps me to hold that in view of the provisions of Sec.322 of the Code, this Tribunal has got every power to entertain the review against its own order either at the instant of aggrieved party or even by suo-moto action. Therefore, I do not find strong substance in the objection raised by the Respondents on the point of maintainability of the present review application and accordingly answer 'Point No.1 in affirmative'.

8. Point No.2&3: In view of affirmative finding of Point No.1, issue remains for consideration as to the scope of review application moved by the Petitioner. It is well settled principle of law, that review is maintainable only on three grounds,

i.e. (i) Patent error at the face of record committed by the court while deciding the matter, which is under review,

(ii) Investigation of new evidence, which was not available at the time of decision, which goes to the root of the *lis*,

(iii) Any other justifiable ground.

9. Herein this case, while arguing the matter, Adv.Shri.Abhang for the Petitioner mainly relied only on two grounds, i.e. patent error at the face of record and any other justifiable ground, which is available to touch the legality of the matter under consideration. In short, no case has been made out by the Petitioner throughout the review application about the new evidence available, which was not considered by the Tribunal while deciding the matter at hand.

10. While considering the legal objection on the ground “**patent error at the face of record**” Adv.Abhang strongly submitted that the proceeding has been conducted against the dead person and LR of deceased tenant were not brought on record by the Respondent / landlord and therefore, the entire proceeding is nullity in eye of law. I do not find strong substance in this ground, mainly on two grounds:

(i) Admittedly, the original proceeding was pending during the lifetime of deceased tenant wherein the sale has been declared ineffective i.e. file No.ALT/SR/9/90 came to be decided on 30/4/91. In the operative part of the said judgment, the tribunal has directed to initiate the further proceedings u/s 32P of the Act, for the disposal of the land in respect of which the sale has been declared ineffective. After considering all these aspects while observing the facts involved in the matter, I have specifically mentioned in my judgment at Para-9, “that the proceedings u/s 32P were in form of continuation of original proceedings conducted u/s 32G of the Act”, and therefore, there is no reason to have a change of sequence of the parties, particularly tenant as a Respondent and landlord as a Petitioner. The entire proceedings were conducted in form of tenant as applicant and landlord as the Respondent. Therefore, I do not find any patent error at the face of record. The proceedings were initiated or otherwise continued after the death of tenant wherein LR has moved the application seeking time to bring LR on record. Suffice to say that, the observations made to that effect in Para No.9 of the judgment, which is under review, are self-explanatory, as to how the entire proceeding is not nullity on the ground of absence of formal compliance of bringing LR on record. On the contrary, while deciding the matter, I have already observed that it was for the applicant / tenant to substitute themselves as the LR of deceased tenant. Therefore, I do not find the contentions raised by the applicant as a patent error at the face of record, so as to take a different view other than expressed while deciding the main revision application.

(ii) Secondly, the advocate for the Petitioner strongly submitted, that the Revisional Court has not considered the documents filed on record before the Revisional Court, while considering the evidence regarding the holding of the landlord at the

material time and even failed to consider the documents filed in the revision application to that effect in form of relevant 7/12 extracts and holding certificate. On this touchstone, at first I may state here that, I have already observed in judgment, which is under review, that the applicant / tenant has failed to plead this fact in his original application before the lower tribunal. Even otherwise, after considering the limitations of discretion vested with the Revisional Court, I have recorded my findings, as to why the production of documents before the Revisional Court is not considered, observations made to that effect in Para-8 of the judgment, runs as under :

"-----The production of such documents at belated stage before the revisional court without justifiable reason does not permit the Tribunal to consider those documents and to come at a different conclusion other than the findings recorded by the trial tribunal on the point of entitlement of order of possession of restoration u/s 32P of the Act in favour of the landlord on the point of ceiling.-----"

11. After considering the above observations made in Para supra, I am of the view that the observations made in the earlier judgment, which is under review are self-explanatory and does not call for interference therein through this Tribunal within its limited jurisdiction of review. So far as the scope of review and interference therein by the same Court has been laid down by Hon.Supreme Court as well as our Hon.High Court in several precedents. The advocate for the Respondents has also relied on two precedents in support of his submissions to that effect. The relevant precedents, which I may rely are as under :

- (i) *Aribam Tuleshwar Sharma Vs. Aribam Pisak Sharma, AIR 1979-SC-1047*
- (ii) *Northern India Caterers (India) Ltd., Vs. Lt.Governor of Delhi, AIR 1980-SC-674*
- (iii) *Haridas Vs. Usharani Bank, 2006(4) MhLJ-14*
- (iv) *Madhusudan Parshuram Vs. M/s.Devcon & otrs., 2000(1) Mh.L.J.447*
- (v) *N.Anantha Reddy Vs. Anshu Kathuria, 2014—ALL SCR--337*

The preposition of law laid down by the Hon.Supreme Court & our Hon.High Court can be summarized as under :

"The normal principle is that a judgment pronounced is final and departure from that principle is justified only when substantial and compelling circumstances are made out. Power of review is not an inherent power, but, which is to be conferred with the court by law either expressly or by implication. The phrase "error apparent on the face of record" not precisely or exhaustively defined. An error cannot be said to be apparent on the face of record, where one has to travel beyond the record. An erroneous decision on merit or erroneous view of law or fact if taken by the court deciding the matter, it does not amount error

apparent at the face of record or even, if one of the possible view if accepted by the court deciding the matter, it cannot be said as error apparent at the face of record”.

"The powers of review cannot be exercised to repair the verdict once given unless the error apparent is pointed out. The mistake apparent on record means that the mistake is self-evident needs no search and stretch at its face. Surely, review jurisdiction is not an appeal in disguise. The review does not permit re-hearing of the matter on merit”.

12. I have gone through all these precedents very carefully and do find that the preposition of law laid down therein guides me to ascertain and fix the limitations of the Court of Review on the touchstone of golden principles laid down in the above precedents. By keeping in mind all these observations and after considering the facts quoted supra, I hold that the Review Petitioner has failed to make out the case on either of the grounds, i.e. error apparent at the face of record or any other justifiable ground. Thus, when the satisfactory grounds are not made out within the scope of review, there is no reason to interfere in the order passed by this Tribunal within its limited review jurisdiction. With these observations, I answer “Point No.2 & 3 accordingly’ and proceed to pass the following order.

13. Before proceeding to pass the final order, I am of the view, this is a fit case where the powers of awarding substantial costs in favour of succeeding party, has to be used and for which following order will meet the ends of justice. With these observations, I proceed to pass the following order.

ORDER

The review application stands dismissed.

The Review Petitioner shall pay the cost of Rs.5000/- to the Respondent and bear their own.

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