

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

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

**No.SS/II/2/2015**

Shri Ananda Sakharam Padalkar  
R/o.Mangale, Tal.Shirala, Dist.Sangli.

.....Applicant

**VS.**

1) Shri.Sachin Maruti Koli  
2) Shri.Nitin Maruti Koli  
3) Smt.Shalan Maruti Koli  
All R/o.Mangale, Tal.Shirala, Dist.Sangli.

.....Respondents

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

Appearance :- Adv. Shri M.S.Padalkar for Revision Applicant  
Adv. Shri J.D.Parit for Respondents

**DATE:- 12<sup>th</sup> MARCH, 2018**

**JUDGMENT**

Being aggrieved by the judgment & order passed by Ld.appellate tribunal i.e. Sub-Divisional Officer, Walwa Sub Dn.,Islampur (hereinafter referred as the "appellate tribunal") in Tenancy Appeal No.4/2013, dt.23/1/2015, the aggrieved appellant / tenant has preferred the present revision application by invoking the provisions of Sec.76 of B.T.& A.L.Act, 1948 (hereinafter referred "the Act") on the grounds more particularly set out in revision application. Parties hereinafter referred in the same sequence and chronology in which they were referred before the ALT Shirala, as the applicants or the respondents as the case may be. Facts giving rise to the present revision application can be summarized as under.

2. Applicant is the landlord of the disputed land Gat No.331/9, situated at Village Mangale, Tal.Shirala to the extent of ½ share therein. The Opponent is the tenant in possession in the said property. The applicant has moved an application dt.17/2/2010 against the Opponent / tenant u/s 32P of the Act, for the possession of the disputed land. As per the case put forth by the applicant, the Opponent is the tenant in possession after the "*Tillers Day*". He has neither paid the rent regularly nor he has exercised the right of purchase within the stipulated period. Therefore, his right to purchase the land has become ineffective. Therefore, the applicant being the owner of the property, having no other source of income, claims possession of the disputed land for the bonafide cultivation.

3. The proceedings came to be registered as tenancy case No.3/2010 before ALT Shirala. After the receipt of notice, the Opponent / tenant has contested the application by filing detail say on 26/8/2010. As per his case, the description of the property is not proper and correct. He claims to be the tenant in possession even prior to the "*Tillers Day*" and specifically pleaded that the application and claim put forth being contrary to the provisions of Law deserves and accordingly be dismissed with the compensatory costs of Rs.10,000/-. Pending the application after the evidence of the applicant / landlord has been recorded before the Ld.trial tribunal, the Opponent / tenant has moved an application dt.29/11/2010 and thereby, put forth his claim u/s 32G of the Act, in form of counter claim. The landlord / applicant has denied the pleadings put forth in counter claim and right of purchase in favour of the tenant. In short, by contesting the subsequent application counter claim, the applicant / landlord prayed for dismissal of counter claim & for grant of relief of possession.

4. After giving full opportunity of trial, the applicant has examined himself and also examined two independent witnesses. Opportunity of cross-examination to those witnesses was offered to the tenant / Opponent. As against this, the Opponent / tenant has not produced any oral evidence or examined any independent witness in support of pleadings put forth. After considering the pleadings put forth, evidence laid and documents proved, the Ld.trial tribunal come to the conclusion that the tenant / Opponent has failed to exercise his right to purchase the land within the stipulated period and thereby, purchase has become ineffective as against him. In addition thereto, the claim in form of counter claim put forth being not proved, the Ld.trial tribunal come to the conclusion that the applicant / landlord is entitled for possession as the sale has become ineffective against the tenant and accordingly, passed the order dt.16/9/2013.

5. Being aggrieved by the said judgment & order passed by the Ld.trial tribunal, the aggrieved tenant has preferred tenancy appeal No.4/2013. The appeal preferred by the tenant, decided on merit after offering opportunity to both the parties to submit their case. The Ld.appellate tribunal come to the conclusion that the landlord has proved his case for possession and the

Opponent / tenant is not entitled for statutory purchase u/s 32(O) of the Act. Accordingly, the Ld.appellate tribunal has confirmed the judgment & order passed by Ld.trial tribunal by order dt.23/1/2015.

6. Being aggrieved by the concurrent findings recorded by the tribunals below, the aggrieved tenant has preferred the present revision application on the grounds more particularly set out in the revision application.

7. After receipt of the R&P from both the tribunals below, heard Ld.Adv.Padalkar for the Opponent / tenant and Ld.Adv.Parit for the applicant / landlord. After perusing the R&P from the tribunals below and submissions made by respective advocates before this Tribunal, following points arise for my determination. I have recorded my findings with reasons thereon as under:-

| <u><b>Points</b></u>   | <u><b>Findings</b></u> |
|--|------------------------|
| 1. Whether the applicant / landlord has proved his right for the relief of the possession u/s 32P of the Act, against the Opponent / tenant? | Affirmative            |
| 2. Whether the judgment & order under revision calls for interference therein as prayed for?   | Negative               |

### **Reasons**

**8. Point No.1:** At first I may state here, that the revision preferred by the aggrieved tenant is against the concurrent findings recorded by the tribunals below, particularly on the point of facts. Still then, after considering the submissions made by the advocate for the Opponent / tenant at the stage of revision, I may state here that the submissions made by the advocate are somewhat purely on legal aspect and i.e. the proof of documents produced and the right of tenancy prior to 1/4/1957. On this aspect, I may state here that, herein this case, the proceedings received from Ld.trial tribunal are self-explanatory to the effect, that on the basis of application moved by the Opponent / tenant on 20/4/1976, tenancy proceedings have been conducted u/s 70(b) of the Act, in respect of the disputed property. The certified copy of the said application is available from the record of ALT. In the said application, the Opponent / tenant has specifically pleaded that, he is cultivating the disputed land through the landlord Maruti Koli since from 1965-66 on the basis of Batai and cultivating the same till this date. The averments made to that effect in the original proceedings of file No.70(b)/9/76 from Para-1 runs as under:-

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These pleadings put forth in the earlier proceedings subsequently reflected in form of judgment & order passed therein and reached to its finality. Not only that, but, by relying upon the judgment & order passed in said tenancy file No.70b/9/76, dt.28/8/76, M.E.No.8655 came to be certified and name of the present Opponent came to be recorded as ordinary tenant thereafter.

9. In the given set of facts, it is not lie in the mouth of the tenant to assert and plead his possession in the suit property as tenant in possession prior to 1/4/1957. Once these observations are made categorically by relying upon the earlier pleadings put forth, it has become evident that rent receipts produced by the Opponent are afterthought and same are not useful, as same are not based upon the pleadings put forth or facts proved in file No.70b/9/76. Therefore, the receipts dt.14/6/1950 & 5/7/-- appears to be fiscal, which has not seen the sunlight prior to the institution of the present proceedings. If at all those receipts were in existence, the question as to why the said documents have not reflected either in the pleadings or even in the earlier proceedings initiated u/s 70(b) of the Act, has remained unanswered. But, this fact is sufficient to observe here, that the receipts placed on record though old for the period more than 30 years, its genuineness is not free from doubt. Therefore, though the presumption is available in respect of existence and execution of the document, still then truthfulness of those receipts being not proved cannot be relied upon at the revisional stage.

10. Secondly, as per the case submitted by the Opponent / tenant before this Tribunal, he has submitted that he claims tenancy over the disputed land through his father since prior to 1/4/1957. However, it is apparent on record, that his tenancy was not ever recorded in revenue record either in form of mutation entry or in form of entry in the column of cultivation till 1965-66. Therefore, there is no question of application of "*Deemed Purchase*" to the present case.

11. Now, the only question remains is that, the right of landlord for possession of the property, particularly when the tenant has failed to exercise his right within the stipulated period, the effect thereof shall follow. In the given set of facts, it is sufficient to hold that the judgment & order passed in tenancy file No.70b/9/76, dt.28/8/76 has determined the right of tenancy and reached to its finality. Therefore, since after 28/8/76, there was no dispute between the landlord & tenant as regards their relationship interse as per the Statute. Therefore, it was incumbent for the Opponent / tenant to exercise the right of purchase within one year from 28/8/76 and i.e. in form of strict compliance by issuing notice of willingness to purchase, in prescribed form, to the landlord as well as the Tribunal concerned. However, unfortunately there is

no evidence or even positive averments of strict compliance carried out by the tenant prior to the initiation of the present proceedings i.e. till 2010. In short, if the tenant has failed to exercise the right to purchase within a stipulated period one year, after the tenancy has commenced and established, then such right to purchase become ineffective, then landlord if proved his case, he is entitled for possession u/s 32P of the Act, for which other grounds are not strictly required to be proved. Mandatory force of compliance u/s 32(O) of the Act, to the given case is equally applicable. In support of these observations, I may keep reliance on the precedent laid down by our Hon'ble High Court, in the case of ***Dina Patil Vs. Dulba Patil, 2005(4) MhLJ-1024***, wherein Their Lordships have ruled as under:-

*"The tenancy commences from the moment when the tenant starts cultivating the land and therefore, it was incumbent upon the tenant to give intimation within one year from the date of commencement of tenancy. If such right is not exercised by the tenant, then the provisions of Sec.32P of the Act, attracted automatically".*

Plain reading of Sec.32P are also self-explanatory to observe here that formal declaration of sale being ineffective is expected only in case of Sec.32G or 32M and not for 32-O of the Act. Herein this case, the claim put forth admittedly and also otherwise as proved governed by the provisions of Sec.32(O) of the Act. Therefore, automatic effect of sale being ineffective has to be followed when the tenant has failed to exercise his right in proper form in proper manner and in due time.

12. Herein this case, before concluding the findings on the point of Point No.1, I may state here that the provisions of CPC are not strictly applicable to the functioning of Tribunal and the procedure before the Tribunal is mainly controlled by the provisions of Mamlatdar's Courts Act, 1906. After going through the entire Statute i.e. Mamlatdar's Courts Act, 1906, I do not find any similar provisions in the said Act, just like Order-8 Rule-6(a) as contended in CPC. In short, there is no provisions in Mamlatdar's Courts Act, to present and put forth counter claim in the said proceedings. In short, relief put forth in form of counter claim in the same proceedings by the Opponent is not maintainable. In view of the consistent observations made supra, the Opponent / tenant has no such statutory right u/s 32G of the Act, particularly when his right of tenancy on the "Tillers Day" was not ever established or even not put forth at any point of time except oral submissions.

13. By keeping reliance on the above precedent quoted in Para-11 supra, I hold that the tenant has failed to exercise the right to purchase within one year from the relationship has been established and recognized by the Statute. In short, after perusing the judgment & order passed by the tribunals below, it has become evident that, the tenant has failed to exercise his right to purchase within a stipulated period. Therefore, findings recorded by tribunals below being based on sound reasonings therefrom, I have no hesitation to hold, that

the landlord / applicant has proved his case for possession u/s 32P of the Act, and accordingly answer the 'Point No.1 in affirmative'.

**14. Point No.2:** In view of affirmative findings of Point No.1 and observations made supra, it has become evident that the judgment & order passed by tribunals below are not only concurrent, but, same are based on sound reasonings in support thereof. Therefore, I am of the view, that having regard to the limitations of this Tribunal to interfere in the concurrent findings recorded by the tribunals below, this matter does not call for interference therein, but, to proceed to confirm the same by dismissing the revision as a whole. Accordingly, I answer 'Point No.2 in negative'.

15. Before parting with the judgment & order, I would like to state here that, the Opponent / tenant has tried his level best to postpone or to delay the delivery of possession by denying the right of landlord. He has played every trick in procedural form to delay the trial as well as to delay delivery of possession. I am of the view, this is the fit case, where I should invoke powers under Rule-36 made under the Act, while imposing the substantial costs against the Opponent / tenant and in favour of the succeeding party i.e. applicant / landlord. In continuation of above observations, I am of the view, if the revision is allowed by saddling costs up to Rs.15,000/-, that will meet the ends of justice. With these observations, I proceed to pass the following order.

### **ORDER**

The revision application stands dismissed.

The judgment & order passed by the tribunals below are hereby confirmed.

The Opponent-tenant / present Petitioner shall pay the costs of Rs.15,000/- to the succeeding party i.e. applicant-landlord / present Respondent within one month from today, or otherwise the landlord is hereby entitled to recover the same alongwith future simple interest @ 10% p.a. from 1/5/2018 till its realization.

Costs imposed shall be recovered as the arrears of land revenue.

**R&P received from the tribunals below be sent back immediately.**

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