

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

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

No.P/II/1/2017

Shri Dnyandeo Haribhau Badade & otrs.,
R/o. Pur, Tal.Purandar, Dist.Pune.
.....Applicants

VS.

Shri.Subhash Digambar Purandare & otrs.,
R/o. 279, Shivajinagar,
Behind Congress Bhavan, Pune-411 005.
.....Respondents

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

Appearance :- Adv. Shri V.N.Kindre for Revision Applicants.
Adv. Shri P.M.Waghmare for Respondents

DATE:- 24th JANUARY, 2019

JUDGMENT

Being aggrieved by the judgment & order passed by Ld.appellate tribunal i.e. Sub-Divisional Officer, Daund-Purandar Sub Dn., Purandar (Saswad), (hereinafter referred as the “appellate tribunal”) in Tenancy Appeal No.14/2015, dt.31/12/2016, the aggrieved tenants have 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. Facts giving rise to the present revision application can be summarized as under.

2. The suit lands more particularly described in the application before ALT were originally owned by Shri.Krishnaji Waman Purandare. Shri.Haribhau Badade was claiming tenancy rights over the disputed land since prior to 1/4/1957. The applicants while presenting the proceeding before ALT have specifically contended that on the “*tillers’ day*” i.e. 1/4/1957 though the tenant was in possession of the suit lands it was allotted to the applicants while they were minor and i.e. since prior to the “*tillers’ day*” . Therefore, the effect of statutory sale u/s 32G of the Act, was postponed during the period of minority of the landlord. Thereafter, the tenant in possession have failed to exercise his right to purchase within the statutory period as per sec.32F(1A) of the Act. Therefore, the applicants being the landlords, have become entitled for the possession of the suit property. Therefore, they have moved the original proceedings before ALT Purandar for possession.

3. The proceedings came to the registered as tenancy case No.164/11. The LRs of the deceased tenant have hotly contested the application by filing their say. Not only that, but, they have filed separate application dt.23/5/2014 and thereby, put forth their claim for fixation of price u/s 32G of the Act. The Ld.trial tribunal after considering the facts put forth and evidence led, come to the conclusion that the right of tenant to purchase the land has become ineffective being not exercised within the statutory period u/s 32F of the Act, and therefore, proceeded to pass the order of possession u/s 32P of the Act, in favour of the applicant / landlords. Being aggrieved by the said judgment & order the tenants have preferred tenancy appeal before the Ld.appellate tribunal bearing No.14/2015, which came to be decided on merit. The Ld.appellate tribunal while recording the concurrent findings come to the conclusion that the right of the tenant to purchase the land being not exercised within limitation, the landlord is entitled for the possession u/s 32P of the Act. Being aggrieved by the said order the present revision application came to be filed on the grounds more particularly set out in the revision application.

4. After the receipt of R&P from both the tribunals below, heard Ld.Adv.Shri.Kindre for the applicant / tenants and Ld.Adv.Shri.Waghmare for the Respondent / landlords. **Perused the R&P from both the tribunals below.** After considering the facts put forth and after perusal of R&P received from the tribunals below 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 tenant has perfected statutory title over the suit lands being a tenant in possession on the “ <i>tillers’ day</i> ” ?	Affirmative
2.	Whether the order of postponement of “ <i>tillers’ day</i> ” passed by tribunal below is valid, legal and proper?	Negative
3.	Whether the concurrent findings recorded by tribunals below are proper & legal as per the provisions of Tenancy Act? If not, whether the same are required to be interfere by this Tribunal within its limited jurisdiction u/s 76 of the Act?	Negative. As per final order

Reasons

5. Point No.1&2: After perusing the R&P received from both the tribunals below, factual aspects involved in the matter which are not seriously disputed or otherwise duly proved by revenue record can be summarized as under:

The original land S.No.77 was divided in sub-division as 77/1 to 77/9 and during the course of implementation of consolidation scheme Gat No.70/1 to 70/9 have been allotted to them. This land was originally owned by Shri.Krishnaji Waman Purandare. He died intestate on 16/1/1957 living behind seven sons as his LRs. Accordingly, succession entry No.709 came to be certified in revenue record on 11/5/1959 by giving the effect of death of landlord and insertion of LRs in the revenue record. In continuation of above facts parties to the *lis* have not seriously disputed or otherwise it has been duly proved that the disputed land entire S.No.77 was in possession of Amruta Aba Badade as the *protected tenant*. His tenancy rights have been recorded in tenancy register on the basis of M.E.No.461. Even otherwise by way of pleadings the respondent / landlords have not specifically denied these facts, but, otherwise admitted the relationship of Amruta Badade as the tenant in possession since prior to the “*tillers’ day*” and also on 1/4/1957 onwards.

6. With these short undisputed facts as per the case pleaded by the applicants they have specifically contended that after the death of Krishnaji and that too after certification of succession entry No.709 the co-owners of the joint family decided to partition the entire joint family property and accordingly, registered partition-deed dt.11/9/1957 came to be effected amongst the parties thereto. In the said partition the disputed land S.No.77 allotted to the share of Subhash, Vilas & Sunil, sons of Digambar Purandare. At the time of said partition all these three sons of the Digambar being minor, their mother Snehal Digambar Purandare, was appointed as guardian for the minor occupant. Accordingly, M.E.No.731 based on registered partition-deed dt.11/9/1957 came to be effected in revenue record.

7. Under these circumstances, now the crucial issue remains for my consideration is that, whether there was a valid and legal order, so as to postpone the "*tillers' day*", particularly when it was not in dispute that the tenant was in possession since prior to and also on the "*tillers' day*", and whether M.E.No.847 is supported by valid order of the tribunal, so as to postpone the "*tillers' day*" u/s 32F of the Act. While scrutinizing the entire record, it has become evident that, the tenant was in possession of the disputed land on 1/4/1957. Still then, while certifying M.E.No.847 Mamlatdar has given effect of partition-deed dt.11/9/1957 and observed that lands being stands in the name of minor occupant / landlord, the "*tillers' day*" has been postponed during the period of minority of the landlord. It is pertinent to note here that, M.E.No.847 has taken on record on 2/9/1964 and certified accordingly. Bare perusal of M.E.No.731 & 847 and conjoint reading of both, it amply suggests that the alleged partition of joint family property was effected by registered partition-deed dt.11/9/1957 and i.e. after 1/4/1957. In short, prior to certification of M.E.No.731 and till 11/9/1957 the land was standing in the name of respective occupants whose names were appearing in revenue record on the basis of M.E.No.709 i.e. succession entry after the death of Krishnaji Purandare. After perusing M.E.No.709 it amply suggests that, all sons of the deceased Krishnaji Purandare, were major at the time of death of Krishnaji Purandare, and they were holding the land as occupant on 1/4/1957 till 11/9/1957. It is well settled principle of law, that if the land was in possession of the tenant on the "*tillers' day*" and the landlord was not under any legal dis-ability contemplated u/s 32F of the Act, the statutory effect of Sec.32 shall have to be followed and that too of confirmation of statutory title in favour of the tenant in possession on the "*tillers' day*". By ignoring this legal effect if any order passed by the

tribunals below earlier, are not only illegal, but, same are void-ab-initio and deserves to be ignored. In support of above observations Ld.advocate for the revision petitioner has rightly called my attention towards the precedent laid down by our Hon'ble Supreme Court, in the case of *Amrit Bhikaji Kale / Kashinath Janardhan, AIR 1983-SC-643*. The proposition of law laid down therein can be summarized as under-

“The combined effect of Section 32F and 32 is that where the landlord is under no disability as envisaged by sec.32F, the tenant of such land by operation of law would become the deemed purchaser. On the “tillers’ day” the landlords’ interests in the land got extinguished and simultaneously by a statutory sale without anything more by the parties, the extinguished title of the landlord was kindled or created in the tenant. The very moment landlord-tenant relationship as understood in common law of Transfer of Property Act came to an end. The landlord from the date of statutory sale was only entitled to receive the purchase price without any act of transfer inter vivos. The Lands Tribunal had absolutely no jurisdiction to proceed on the footing that the date of sale was postponed. It is neither an incorrect order nor an erroneous order but the Lands Tribunal lacked the jurisdiction to proceed u/s. 32-F. Therefore all subsequent proceedings were an initio void and without jurisdiction”.

8. I have gone through the above precedent very carefully and do find that, not only the proposition of law, but, the facts and circumstances of the case referred supra and the case at my hand are not only identical, but, also similar to each other. In the present case also the alleged registered partition on which basis M.E.No.731 came to be certified and came into existence on 11/9/1957 i.e. long after 1/4/1957. Therefore, passing of any order for postponement of “tillers’ day” and giving its effect for certification of M.E.No.847, all these events are without jurisdiction and nullity in eye of Law. In these circumstances when there was no reason for postponement of “tillers’ day”, neither the issue of application of Sec.32F of the Act, shall come into force nor it will be obligatory for the tenant in possession to exercise the right of purchase within the stipulated period or otherwise with due compliance therefor. It is for the tribunal to initiate such proceedings and enquire the matter within the framework of sec.32G of the Act, for the fixation of price.

9. Second more important issue raised by the Ld.advocate for the respondent / landlord is that, the tenant has not exercised right of

purchase u/s 32G of the Act, till the present respondent / landlords have moved application u/s 32P of the Act. Furthermore, the application moved by the tenants in the proceedings initiated by the landlord dt.23/5/2014 is also barred by limitation being not moved within a 'reasonable time'. With these submissions Ld.advocate for the respondents strongly submitted that the rights if any were in force in favour of the LR's of the deceased tenant same have been extinguished due to the application of law of limitation. On this touchstone Ld.advocate for the respondent has kept his reliance on the precedent laid down by our Hon'ble Supreme Court, in the case of *Appa Magdum / Akubai Nimbalkar, AIR 1999-SC—1963*.

10. I have gone through the above precedent very carefully. In the case cited supra there was a valid order of the tribunal in respect of the postponement of the "tillers' day" on the ground, that the landlady was widow on the "tillers' day". The validity of the postponement of the "tillers' day" was not in dispute or otherwise it has been duly proved in the case referred supra. Herein this case, the very factual aspect of postponement of the "tillers' day" and legal effect thereof reflected in revenue record through M.E.No.847 is void-ab-initio and without jurisdiction as it has been taken down on the basis of alleged partition-deed, which has brought in existence after 1/4/1957 and that too only with intention to defeat the statutory right of tenant in possession on "tillers' day". Therefore, with due respect to the law laid down in the above precedent, I am of the view that the proposition of law laid down therein is not strictly applicable to the case at hand. On the contrary, the precedent referred by Ld.advocate for the revision petitioner quoted supra in Para-7 certainly guides me to hold that, herein this case the right of tenant as a statutory purchaser has not at all defeated merely because the mutation entry has been certified in revenue record. Apparently, said entry is not based on valid order passed within the jurisdiction of the tribunal and as it has been passed in ignorance of effect of deemed tenancy, right of statutory purchase on "tillers' day" and subsequent partition effected after 1/4/1957. Therefore, I do not find strong substance in the submissions made by the Ld.advocate for the respondent who is supporting concurrent findings recorded by the tribunals below.

11. So far as the issue of limitation raised by the Ld.advocate for the respondent, so as to exercise the right u/s 32G of the Act. I may keep reliance on the precedent laid down by our Hon'ble High Court, in the case of *L.J.Kriplani / Manik Patil, 2000 ALL MR (3)-281*.

The proposition of law laid down in these precedents can be summarized as under-

“Merely because the tenant has initiated the proceedings in the year 1981 that would not ensure to the benefit of the landlord in any manner. On bare reading of Sec.32G of the Act, it makes clear that the duty to initiate the said proceedings is preliminary caste on the authorities. Therefore, merely because the tenant initiates the proceedings belatedly, it cannot rob him of the right which is crystallized in his favour on the “tillers’ day” having become a deemed purchaser of the lands. The provisions u/s 32G of the Act, are merely for determining the purchase price in respect of the lands which have been deemed to have been purchased by the tenant on “tillers’ day” .

12. I have gone through the above precedent very carefully and do find that, the facts of the precedent quoted supra are quite identical that to the facts and circumstances of the case at hand. Not only that, but, herein this case also the nature of tenancy rights coupled with possession of the original tenant and after the death of original tenant his LRs have been duly proved. There is no question so as to challenge the M.E.No.847 by the present applicant / tenants by invoking the remedy u/s 247 of the Code. On the contrary, if the M.E.No.847 is ever based upon void order which is non-est in eye of law, it does not confer any title, right whatsoever in favour of the landlord nor it becomes a matter of reaching its finality for want of exercising the remedy of appeal / revision / review against it. On the contrary, the act which is void and illegal perse, it shall remain void though the right of appeal is not exercised against it. Therefore, said entry is not at all helpful for the present respondent / landlords for the claim u/s 32P of the Act.

13. With these observations, I hold that the disputed land was standing in the name of landlords, who were not either of the disabilities on the “tillers’ day” i.e. 1/4/1957. Therefore, there was no cause of action or otherwise jurisdiction for the tribunal to postpone the “tillers’ day” by taking the note of partition-deed, which came into existence far later than 1/4/1957. Therefore, same also does not sustain in eye of law. With these observations, I answer the Point No.1 in affirmative and Point No.2 in negative.

14. Point No.3: In view of the findings recorded as against the Point No.1&2 in above Paras, it has become evident that the concurrent

findings recorded by both the tribunals below are perse illegal against the record. Not only that, but, they have passed those orders in ignorance of settled proposition of law as regards the effect of subsequent transfers or partitions made after 1/4/1957 as against the deemed purchaser. Therefore, when the authority below has passed any order contrary to the law or settled principle of law, this Tribunal has every power u/s 76 of the Act, to interfere therein and to pass proper judicial order in the matter. With these observations, I answer the 'Point No.3 in negative, as per final order' and proceed to pass the following order.

ORDER

The revision application is hereby allowed.

The judgment & orders passed by both the tribunals below are hereby set aside.

The application moved by the landlord u/s 32P of the Act, stands dismissed.

The ALT is hereby directed to hold the enquiry u/s 32G of the Act, as afresh and to pass the appropriate orders according to law.

