

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

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

No. TNC-REV-63-2003-NS

Khairat Masjid through its trustee,

- 1) Gani Hussein Mulani
 - 2) Ajmuddin Mulani
- Both R/o. Chinchner Santh Nib,
Taluka & Dist.Satara.

.... Applicants

VS.

Sarjerao Baburao Sonawale

D/H---

- 1) Tanaji Sarjerao Sonawale
R/o.110/04, Shri Ram Hsg.Soc.,
Shahunagar, Godoli, Satara.
- 2) Mohan Sarjerao Sonawale
R/o.Sambhajinagar, Behind Shalinitai School,
Koregaon, Tal.Koregaon, Dist.Satara.

.... Respondents

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

Appearance :- Adv. Shri Mane for Revision Applicants.
Adv. Shri Shete for Respondents

DATE:- 16th MARCH, 2017

JUDGMENT

1. Being aggrieved by the judgment & order passed by Ld.appellate tribunal i.e. Sub-Divisional Officer, Satara Sub Dn., Satara (hereinafter referred as the "SDO") in Tenancy Appeal No.7/2002, dt.10/3/2003, the aggrieved landlord 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 land old S.No.64/6 (new Gat No.946) situated at Village Chinchner, Tal.Satara, adm.81R was originally owned by Bala Ali Mulani. The father of the opponents Babu Genu Sonawale was the tenant in possession of the said property

since prior to the "*Tillers Day*" i.e. 1/4/1957. In view of the provisions of Sec.32G of the Act, as on the Notified Date though the tenant was in possession, the effect of "*Deemed Purchase*" was postponed by taking a note of employment of present applicants in the Military Department. That order came to be passed in file No.32G/42, dt.14/4/67. Thereafter by taking note the change circumstances proceedings again re-opened through file No.LSP/3-6/14, the enquiry u/s 32G was re-opened. Then ALT has decided the matter by order dt.11/5/87 and thereby, granted the certificate u/s 32M in favour of the tenant in possession on the "*Tillers Day*", subject to the compliance of conditional order passed in his judgment & order.

3. Being aggrieved by the said judgment & order dt.11/5/87, the aggrieved appellants have preferred Tenancy Appeal No.7/2002 and thereby, challenged the order passed u/s 32G of the Act in favour of the LRs of the deceased tenant, on the grounds more particularly set out in memo of appeal.

4. Ld.appellate tribunal i.e. SDO have heard both the parties at length and after condoning the delay in preferring the appeal, the Ld.appellate tribunal had decided the appeal on merit. Ld.SDO, come to the conclusion that the appellants have no case on any of the grounds so as to set aside the order of grant of certificate issued in the name of LRs of the deceased tenant. Therefore, appeal came to be dismissed by order dt.10/3/2003.

5. Being aggrieved by the said judgment & order the aggrieved landlords have preferred the present revision application on the grounds more particularly set out in the revision application. The main contentions raised by the Revision Petitioner are twofold, one the suit property is the Trust Property since beginning even prior to the "*Tillers Day*" i.e. 1/4/1957. Therefore, the provisions u/s 32(A) to 32(R) are not applicable to the Trust Property, which is ever stands in the name of Khairat Masjid Trust, represented through its Trustee, who are the present Revision Petitioners. Secondly, they have strongly contended that in view of the fact of employment of the applicants in Military Department, the application of Tenancy Act has been totally exempted and therefore, the tribunal below has committed error in passing the order u/s 32G in favour of the LRs of the deceased tenant. With these specific grounds the applicants have prayed for setting aside the orders passed by the tribunals below.

6. Heard Ld.Adv.Mane for the applicants / Revision Petitioners and Ld.Adv.Shete for the Respondents / tenants at length. Perused the R&P from both the tribunals below, including the documentary as well as oral evidence placed on record. After considering the facts put forth, evidence led, documents proved and the submissions made by respective advocates before this Tribunal, following points arise for my determination. I have recorded my findings with reasons thereon as under :-

Points

Findings

1.	Whether the judgment & order passed by the ALT in file No.LSP/3-6/14, dt.11/5/87 is legal, proper and correct ?	Affirmative
2.	Whether the judgment & order under revision calls for interference therein through this Tribunal within its limited revisional jurisdiction ?	Negative

Reasons

7. **Point No.1&2 :** Parties to the suit have not disputed the fact that one Rahiman Abdul Mulani, was the owner of the property in the capacity of Manager, his brother who was having share therein was in Military service at the material time, when the proceedings u/s 3G were initiated before the ALT. By taking the note of employment of co-owner in Military Deptt., ALT Satara by order dt.30/3/64 postponed the date of effect of "*Tillers Day*" as per Sec.32F(1) of the Act and thereby, dropped the proceedings for time being. Copy of the said order is at page-47 from the lower courts record. Secondly, tenancy in favour of the applicant even prior to the "*Tillers Day*" is not ever disputed, but, same has been reflected from revenue record in form of 7/12 extracts, which are at page-35 & 37. The statement of tenant recorded on 25/3/64 is also on record to that effect.

8. Now, the short question remains for the consideration of this Tribunal is that, the several pleas raised by the Revision Petitioners challenging the order passed u/s 32G of the Act, in favour of the tenant in possession. The plea raised is twofold, at one stage the LR of the landlord specifically asserts that, the co-owners being in Military service, effect of "*Tillers Day*" was postponed and effective service of thereof is not given to all the interested persons. On this touchstone, at first we have to see the provisions of Sec.43(1B) of the Act and it should be read alongwith Sec.32P of the Act. Conjoint readings of this section makes it crystal clear, that even though the effect of "*Tillers Day*" is postponed the beneficiary under Chapter-IIIAA has to comply the provisions of Sec.43(1B) of the Act strictly, whereby the beneficiary thereunder is under obligation to exercise such right by issuing notice within two years from the date on which the military-man ceases from his duty. The relevant provision of Sec.43(1B)(2) quoted here just for reference, which runs as under :-

43(1B)-----

(2)-----

*"Provided that in case of a landlord who has ceased to be a serving member of the armed forces, **such notice shall be given and application made within two years from the date of such cesser;** and if he dies before the expiry of these two years without giving such notice or making such application, then within two years from the date of his death."*

9. Herein this case, the Revision Petitioners have not pleaded the specific date of employment and the date on which the military-men concern have been ceased from their duties. However, observations made by tribunals below i.e. Ld.appellate

tribunal in judgment rendered in Tenancy Appeal No.7/2002 helps me to hold that, both the co-owner of the suit property i.e. Gani Hussein Mulani and Ajmuddin Mulani, who were in military service from Sept.1953, they have been retired from their service on 31/1/75 and 18/9/74 respectively. However, since from those dates none of the owner has invoked the provisions quoted supra, so as to entitle them for the possession of the suit property. Thus, on this ground the plea raised, challenging the legality of the orders passed by the tribunals below does not sustain in eye of law.

10. Secondly, for the first time before the Ld.appellate tribunal, the Revision Petitioners have come with a case that the suit property belongs to Khairat Masjid Trust represented through its Trustees. Therefore, the provisions of the Act are not applicable to the case at hand and on this touchtone, the order passed u/s 32G by ALT dt.11/5/87 does not sustain in eye of law. While examining this plea on the legal touchtone, at first I may state here that, the person entitle for exemption u/s 88B has to move the Collector for seeking such exemption and certificate so obtained shall be the conclusive proof for the proceedings before the tribunal. Not only that, but, before moving the proceedings for such certificate the Revision Petitioner has to plead and prove, that the disputed land was ever assigned or donated to the Trust before 1/8/1956 for the purposes of rendering the services laid down in the sub.sec.(c) of Sec.88B(1). Herein this case, the Revision Petitioners have placed on record the Trust Certificate and the details of the property. Same is not sufficient to hold that the property was ever standing in the name of Trust on the notified date i.e. 1/8/1956. On the contrary, observations made by the Ld.appellate tribunal makes it crystal clear that the property was not ever standing in the name of Trust on the notified date or even the date of registration of the Trust also not satisfying the requirements of the section. As per the Trust record, the suit property entered in trust register on 30/1/62 and not on 1/8/56. No documentary evidence has been placed on record to show that before moving the application or atleast disputing the correctness of judgment & order passed by the ALT dt.11/5/87, the applicants have ever obtained certificate u/s 88B(2) of the Act. Admittedly, there is no documentary evidence to establish the fact that the present Revision Petitioners had ever moved the Collector for granting such exemption in their favour or ever succeeded in doing so. Before applying the provisions of Sec.88B in form of exemption to the Trust, it was necessary for the Revision Petitioners to obtain the certificate through Collector for such exemption as required by Sec.88B(2) of the Act. Admittedly, such certificate is not on record. Therefore, unless such certificate is obtained after due enquiry before the Collector, the plea of exemption raised before this Tribunal cannot be entertained.

11. On these touchtone, the Ld.Advocate for the Respondent rightly called my attention towards the precedent laid down by our Hon.High Court in the case of *Laxminarayan Temple through its Trustees Vs. Laxman Chandore, reported in AIR 1970 Bom.23(DB)*, wherein while considering the nature of property and proof required for exemption u/s 88B of the Act, our Hon.High Court has ruled as under:

"The exemption granted by Sec.88B is not confined to the operation of Sections 32 to 32R of the Act, but extends to the operations of several other provisions of the Act. A Trust may be created after Sec.88B came into effect and still the lands of the Trust would be entitled to the exemption given by that Section. A Trust however, cannot claim exemption under that Section in respect of lands which had already become the property of its tenants before the right of exemption was acquired by the Trust."

I have gone through the above precedent very carefully and found that, herein this case, the suit property came to be registered long after the "Tillers Day" and after the statutory ownership was vested with the tenant in possession on "Tillers Day" i.e. 14/1957. In short, on this ground also the revision application is devoid with merits.

12. With these observations after perusing the entire record and proceedings, I do find that the Revision Petitioners have failed to bring out any of the legal or factual defect or procedural illegality at the face of record in the judgment & orders passed by the tribunals below. After considering the scope of Sec.76 of the Act, I do find that no ground has been successfully made out to have an interference therein through this Tribunal within its limited revisional jurisdiction. Suffice to say that revision being devoid with merits deserves to be dismissed. With these observations, I answer the 'Point No.1 in affirmative & Point No.2 accordingly' & proceed to pass the following order.

ORDER

The revision application stands dismissed.

The judgment & order passed by the Ld.appellate tribunal i.e. SDO Satara is hereby confirmed.

No order as to costs.

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

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

