Kalam 32F 29 31 88 Pg No 75

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

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

No.TNC/REV/58/2007/NS

Shri Kisan Ananda Thombare & otrs.
Through POA—
Applicant No.3 Shri.Dattatraya Ananda Thombare
for self & applicant No.1 & 2,
R/o.Lonand, Tal.Khandala, Dist.Satara. .....Applicants

VS.

Shri.Laxman Dagadu Thombare
D/H—
Shri.Sopan Laxman Thombare & otrs.,
R/o.Lonand, Tal.Khandala, Dist.Satara. .....Respondents

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

Appearance :- Adv. Shri J.P.Dhaytadak for Revision Applicants.
Adv. Shri N.V.Gaikwad for Respondents

DATE:- 17th NOVEMBER, 2018

JUDGMENT

Being aggrieved by the judgment & order passed by Ld.appellate tribunal i.e. Sub-Divisional Officer, Wai Sub Dn.Wai (hereinafter referred as the "appellate tribunal") in Tenancy Appeal No.13/2003, dt.29/1/2007, the aggrieved 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. Facts either admitted or not seriously disputed or otherwise duly proved on record can be summarized as under.

2. One Krishna Thombre, was the original landlord of both the lands. He died in or about 1943-44 living behind two widows named Sitabai & Taibai, as the only LRs. Succession entry No.2090 to that effect has been certified on record on 21/7/1949. As such both the widows represented ½ share each in both the disputed lands after the death of original landlord. Shri.Dagadu Thombre & Kondi, were the tenants in possession of both the lands since prior to the *"tillers' day"* . As on the *"tillers' day"* both the landlady's being widow, right of statutory purchase in favour of the tenant in possession was postponed by giving the effect of Sec.32F of the Act. Meantime, during the lifetime of landlady Sitabai, executed Will in favour of her grand-daughter Gajarabai on 6/1/1962 and died on 24/7/1962. Thereafter, on the basis of Will dt.6/1/1962, M.E.No.3870 came to be certified for the column of occupancy in ROR. Furthermore, death of landlady Taibai on 15/5/1962, which is on record is also not seriously disputed.

3. So far as the branch of tenants are concerned, parties are not at variance that original tenant Dagadu Thombre, claimed to be the tenant in possession on the *"tillers' day"* . He died on 13/6/72 and succession entry to that effect in the name of two sons and four daughters effected on 1/9/98 i.e. after 26 years of the death of the tenant. The present applicants are the LRs of Ananda and present respondents are the LRs of Laxman. One additional fact which is on record, which should not be lost the sight is that, son of tenant Laxman was married with grand-daughter of the landlady Sitabai, whose name was Gajarabai. As both the landlady's were widow, ALT has passed order dt.5/9/64 in respect of the share of Sitabai and thereby, postponed the *"tillers' day"* in respect of the land S.No.10,11,12,37 & 18. So far as the share of Taibai in land S.No.10,11,12,18 & 37, separate order has been passed on 26/6/59 and thereby, *"tillers' day"* has been postponed in respect of the both the lands.

4. With these short un-disputed facts, as the *"tillers' day"* was postponed in respect of the both the lands, ALT has taken the cognizance thereof for the first time and imitated *suo-moto* proceedings through file No.32F/Lonand/1018, and decided the same by order dt.26/3/92, whereby, the enquiry conducted came to be closed for the reasons recorded in the judgment. The said enquiry was conducted without LRs of deceased tenant being brought on record. That matter was taken in appeal through tenancy appeal No.46/92. The Ld.appellate tribunal remanded the matter for fresh enquiry for the reasons recorded in its judgment dt.31/7/93. After the remand fresh enquiry was conducted in presence of all the interested persons and parties thereto. ALT by his judgment & order in tenancy case No.3201/Lonand/4/2000, dt.28/11/2003 fixed the price of the tenanted land

in favour of the LRs of the deceased tenant. Being aggrieved by the said judgment, branch of landlady represented through the son of the tenant Laxman filed appeal No.13/2003. The said appeal has been allowed and thereby, order u/s 32G of the Act, passed in favour of the tenant came to be set aside. Being aggrieved by the said order the branch of contesting tenant i.e. LRs of Ananda filed the present revision application on the grounds stated in the revision application.

5. After the receipt of record from both the tribunals below matter was fixed for final hearing. Heard Ld.Adv.Shri.J.P.Dhaytadak for the revision petitioners and Ld.Adv.N.V.Gaikwad for the Respondent/ LRs of the landlady.

6. It is pertinent to note here that, during the course of final arguments of revision application, the revision petitioners have filed substantial documentary evidence in form of certified copies of mutation entries, judgment passed in RCS No.73/2011 and certified copy of application filed in tenancy case No.318/62 by the landlady Taibai and statement of Gajrabai in tenancy file No.337/62, as a important documentary evidence, which should be looked into while deciding the revision application on merit. After giving anxious thought to the submissions made and valuable evidentially value of all these documents, I do find that though this is a Revisional Tribunal, it is desirable to consider all these documentary evidence on record, in the light of submissions made by the revision petitioners in support of their new case tried to make out u/s 29, 31 & 88C of the Act. Therefore, after considering the Law laid down by our Hon'ble Supreme Court, I hold that the production sought deserves to be allowed, however, make it clear to consider the documents on merit about its admissibility and proof, while deciding the revision application.

7. While doing so, it is pertinent to note here that, Ld.advocate for the revision petitioner by keeping reliance on those documents filed before this Tribunal for the first time, strongly submitted that both the landlady's have invoked right of possession during their lifetime by invoking the provisions of Sec.29, 31 & 88C of the Act. Therefore, once the fact has been duly proved, that the landlady has invoked the remedy of possession during the period of legal dis-ability, the application of Sec.32F of the Act, does not survive.

8. As against this Ld.advocate for the respondent strongly submitted that the documents relied by the petitioners for the first time before this Tribunal have no relevance either with the disputed property or parties thereto. So also such production is un-warranted for want of pleadings and evidence. Therefore, revision application being hopelessly devoid with merits, deserves to be dismissed. After giving anxious thought to the submissions made by the respective Ld.advocates and after perusing R&P from both the tribunals below, following points arise for my determination. I have recorded my findings with reasons thereon as under :-

	Points	**Findings**
1.	Whether the applicant / tenants have proved that their right of statutory purchase u/s 32G of the Act, from the date of *"tillers' day"* is not defeated for want of mandatory compliance of Sec.32F of the Act, because the landlady has exercised right of possession during her legal dis-ability?	Not proved
2.	Whether the right of applicant in respect of the statutory purchase have been lawfully comes within the ambit of Sec.32F of the Act?, and if so, whether it is affected by any of the breach contemplated in Sec.32F of the Act?	Yes
3.	Whether the judgment & order passed by the Ld.appellate tribunal sustain in eye of Law?, and if yes, if it requires any interference therein at the hands of this Tribunal within its limited jurisdiction?	Operative order is correct; hence no interference is called for.

Reasons

9. Point No.1,2&3: So far as the legal position is concerned, there should not be divergent view to the effect that, once the landlady has invoked the remedy of possession u/s 29 of the Act, during the period of legal dis-ability, and that remedy if failed, right of tenant of deemed purchase cannot be defeated for the compliance of u/s 32F of the Act. However, while doing so at the stage of revision, at first I may state here that, in the present case proceedings are not at all initiated by LRs of the landlord for restoration of possession or by the LRs of deceased tenant u/s 32F of the Act, but, the proceedings came to be initiated *suo-moto* by ALT, and i.e. by issuing notice to the interested party at the second round of litigation after the remand. Therefore, I am of the view that it is well settled, that the proceedings before the tribunal shall have to be conducted by following the procedure contemplated under the provisions of Mamlatdar's Courts Act, 1906. The parties to whom the tribunal has asked to participate in the proceedings has to exercise their right by presenting their pleadings either in form of plaint or written statement as the case may be. Provisions of Sec.7 to 9 of Mamlatdar's Courts Act, are self-explanatory and sufficient to that effect. Unfortunately, even after remand none of the parties have participated in the proceedings by presenting their respective pleadings either in form of plaint, written statement as the case may be. The tenor of the proceedings initiated by the Ld.trial tribunal itself indicates that the landlords are shown as the applicant

and the LRs of the tenant are shown as the respondent in the proceedings before the ALT. Therefore, it was necessary after the service of notice by the tribunal for both the parties to present their respective pleadings in form of plaint or written statement as the case may be. This has not done so in the present *lis* and entire trial is without sufficient pleadings on material facts.

10. Secondly, It is pertinent to note here that, neither the applicant / landlord nor the tenant / respondent have felt it necessary to enter in the witness box to make out their case by giving evidence on oath. There is no evidence on record as a part of record, that the Ld.trial tribunal has ever rejected their right to lead any substantial oral evidence though they were desirous. Herein this case, burden is on the tenant to establish the plea that their right is not defeated by non-compliance of Sec.32F of the Act. Keeping in mind, burden of proof which lies on the tenant, I have to examine the plea raised which is entirely based on documents only and on the Law set at rest on that point without material pleadings or evidence so as to put up the case u/s 88C, 29 & effect thereof, by exclusion of provision of 32F of the Act.

11. Before considering the evidentially value of statement relied by the petitioner, at first I may state here that the so called proceedings were not ever initiated by landlady Sitabai, who was under legal dis-ability being the widow, during her lifetimes. The so called statement is of deceased Gajrabai who claims interest in the property as the legatee of Sitabai. This fact makes it clear that soon after the death of Sitabai right has been accrued in favour of legatee i.e. Gajrabai. Her so called statement has been recorded by the tribunal, which has been relied by the petitioner. Therefore, recording of such statement after the death of the landlady under legal dis-ability, any proceedings initiated subsequent thereto comes u/s 32F of the Act, and not u/s 32 & 29 of the Act, as a proceedings during the period of legal dis-ability. Taking of recourse u/s 32F(1a) of the Act, means terminating the tenancy u/s 31 of the Act, within one year from the date of the legally disabled landlord. Admittedly, there is no case put up about the termination of tenancy u/s 32F of the Act, by Gajrabai as the legatee of legally disabled landlady. In short, there was no legal proceedings instituted by Gajrabai after the death of Sitabai.

12. At first while considering the stage of raising of Issue for the protection of Sec.88C of the Act, before this Tribunal, I would like to examine, whether the case is governed by u/s 32F of the Act, or whether the tenant is entitled to have an exclusion of the conditions of Sec.32F of the Act, by application of Sec.88C of the Act. In that light, party has to plead first, that their right is not affected by the legal dis-ability, with the landlord as the landlady has already exercised the right of possession and same has been rejected, it has to be specifically pleaded and proved too on that count. Admittedly, there is no pleadings or even tenants have not made available themselves for cross-examination by the adversary on the point of strict compliance u/s 88C of the

Act, and its effect in the light of Sec.32F of the Act. One more thing which I would like to make it clear that even at the time of presenting the revision application, the revision petitioners have not put up ground of revision in their revision application, that both the tribunals ought to have consider the case by keeping in mind provisions u/s 88C of the Act, and exclusion of contingency laid down u/s 32F of the Act, to the given case. Unless specific ground is mentioned in the revision application, it cannot be raised by filing additional evidence on record. In support of these observations, I may keep reliance on the precedents laid down by our Hon'ble Supreme Court, in the following cases-

(i) Kalyanpur Line Works Ltd. / State of Bihar, AIR 1954-SC-165

(ii) Chittori / Kuttppa, AIR 1965-SC-1325

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

> *"No party or council is entitled to make the grievance that grounds argued were not considered if same are not set out in memo of appeal. In exceptional cases party desires to add new grounds as a part of arguments, it will usually be convenient by a substantive application for addition of grounds. Only pure question of law could be raised at any stage of case and also in the final court of appeal. When party had no opportunity to adduce evidence upon the mixed question of facts and Law, such questions should not be allowed to be raised at the time of arguments before the appellate court.*

13. In view of Law laid down in the above precedent, I am of the view that the present applicants have utterly failed even to suggest the amendment in the revision application before raising the Issue of legality of the orders passed by the Ld.appellate tribunal by ignoring the effect u/s 88C of the Act.

14. By keeping in mind the above observations while examining the evidentially value of the statement referred by the petitioner in support of their case. Secondly, Ld.Adv.Shri.J.P.Dhaytadak, for the revision petitioner without disputing the fact of want of pleadings and evidence on the point of Sec.88C r/w Sec.32G of the Act, called my attention towards the certified copy of deposition recorded in tenancy case No.337/62. By keeping reliance on this copy, Ld.Adv.Shri.J.P.Dhaytadak, strongly submitted that this statement itself sufficient to draw the inference that, the landlady has invoked the remedy of possession during the period of legal dis-ability and which has been admittedly ended against her. Therefore, provisions of Sec.32F. So far as the share of Gajarabai in the disputed land will not be applicable. No doubt, while considering the evidentially value of this document, at first I may state here that as a fact on record the certified copy referred is from the tenancy proceedings No.337/62. However, nowhere it bears the signature or

any sign in token of execution below the statement. On the contrary, the tribunal while rejecting the statement has positively observed that, parties were not served and present in the court on the date of hearing, and hence, same is illegal and I cancelled the same. After going through these observations made by the tribunal below just below the deposition referred supra, it makes clear that the deponent was not present before the tribunal, when the matter was called for. Even the said document nowhere discloses any sign of execution put up thereon by Gajrabai Laxman Thombre. Therefore, whether that certified copy satisfies the requirement of Sec.80 of Evidence Act, has to be examined. In my humble opinion, it does not satisfy minimum requirement so far as the identity of the witness or the maker of the statement so as to make it admissible within the Sec.80 of Evidence Act. In support of above observations I may keep reliance on the precedent laid down by Hon'ble High Court of Rajasthan in the case of ***Prithvi Singh / Teji, LEX (Raj.) 155(4)-24 (DB).***

The proposition of law laid down in the above precedent can be summarized as under-

> *"The presumption as to the identity of the Deponent under this section ever depends upon heading of deposition, in which, name, age, residence of the witness is stated. It is necessary to adduce evidence proving identity of the person, who gave the evidence before attaching the presumption thereto. If no steps were taken to establish the identity of the person making the statement in question, it cannot be said that the statement was infact actually made by the so called Deponent."*

15. I have gone through the above precedent very carefully and do find that, in view of the settled proposition of Law laid down therein, certified copy relied by the petitioner to establish the fact that the landlady has invoked the remedy for possession during the period of her legal dis-ability is not at all helpful for them. Furthermore, mere deposition is not the initiation of the proceedings. As per the provisions of Sec.7 to 9 of Mamlatdar's Courts Act, Mamlatdar has to record the verification if he found it necessary to verify the truthfulness of the contents made in the application / plaint, and it shall be the part of the plaint filed by the claimant before him. Herein this case, the statement relied is not accompanied with the application. Therefore, it cannot be treated as a verification recorded by Mamlatdar was as per the provisions of Sec.7 of Mamlatdar's Courts Act. Admittedly, notices were not served to the parties, that means the statement recorded is not the part of evidence recorded during the trial. Therefore, it could be assumed that it is a verification recorded by the Mamlatdar to verify the truthfulness of the averments made in the application. Again, question remains un-answered, as to why the application is not accompanied with the statement, when the statement is the part of the such application. Therefore, it creates genuine

doubts about the truthfulness of the proceedings and the nature of proceedings in which the statement was recorded. Therefore, said copy of statement is not sufficient to conclude, that the landlady had ever exercised her right for possession during the period of her legal dis-ability, or soon after the death of original landlady, as Gajrabai claims ownership in the property on the strength of Will executed by Sitabai i.e. document dt.6/1/1962.

16. Ld.Adv.Shri.J.P.Dhaytadak, for the revision petitioner called my attention towards the application moved by the POA for the landlady, wherein, he has stated that he has preferred an appeal against the said order and still then the proceedings u/s 32G of the Act, be stated. With utmost careful observations as stated supra, I have already held that there is no evidence about the institution of the proceedings as such. Therefore, filing of appeal against such does not survive. Therefore, any statement made before the Ld.trial tribunal regarding the pendency of appeal does not take the place of required proof.

17. In short, in any case there is no sufficient evidence to establish the fact that Gajrabai had ever exercised her right of possession by invoking the provisions of Sec.88C r/w Sec.31 & 29 of the Act. Therefore same is not helpful for any purpose in support of applicant / revision petitioners. At this juncture Ld.advocate for the revision petitioner tried to rely upon the proposition of Law laid down by our Hon'ble High Court, in the following two cases and submitted that the documents filed on record are sufficient to bring the case out the clutches of Sec.32F of the Act.

(i) *Anna Patil / Vasant Kulkarni, 1963 (Bom)-36 (FB)*

(ii) Nago Mahajan / Yashodabai Mahajan, 1978 BLR-427

18. I have gone through the above precedents very carefully and do find that, the facts of the case cited supra are quite distinct than the case at hand. At first, in the cases referred supra, date of application u/s 88C of the Act, was the subject matter under consideration and not the dispute regarding applicability of Sec.88C of the Act, on one hand and Sec.32F r/w Sec.29 of the Act, on another hand. Therefore, with utmost humbleness I may state here that the proposition of Law laid down in the above precedents is not helpful for the applicants, so as to bring the case out of the clutches of Sec.32F of the Act.

19. Thirdly, the Ld.Adv.Shri.J.P.Dhaytadak for the revision petitioner called my attention towards certified copy of application in tenancy case No.318/62. The said application is moved by the landlady by invoking the remedy u/s 33B r/w Se.29(A) of the Act. After perusing the said copy, it amply suggests that though it satisfies the requirement of execution, same is not related with the subject matter in dispute. Neither the landlady Gajarabai as the applicant nor the present applicants or their predecessors are the party to the proceedings

in the capacity of tenant. The said copy of the application moved by the Taibai Thombre against Kondi Daji Thombre, and not against the father of the present applicants, who claims the tenancy rights through their father. In short, said certified copy is neither related to the share of Gajrabai, nor it related to the tenancy rights of the present applicants, so as to relieve them from the clutches of Sec.32F of the Act. In addition thereto, there is no evidence on record to show that the proceedings was validly registered with due compliance required under the provisions of Mamlatdar's Courts Act, and the tenant had ever participated therein for the purpose of resistance to the relief of the restoration of possession. Therefore, same is also not helpful for the present applicants, so as to get relevance from the clutches u/s 32F of the Act.

20. Now, short question remains for me, that there is no documentary or oral evidence with sufficient pleadings to satisfy the plea raised by the applicants before this Tribunal, for the first time so as to establish that they are not bound by the strict compliance of Sec.32F of the Act, and certainly fails in Toto to that effect. In that sequence it becomes necessary to consider the mandate u/s 32F of the Act, particularly in respect of the tenant in possession on the *"tillers' day"*, whose *"tillers' day"* was postponed with valid orders passed by the tribunal. In that context, it is well settled principle of law, that once the case is bring within the ambit of Sec.32F of the Act, the tenant has to exercise his right of statutory purchase within the period prescribed under the Section and i.e. within one year from the period when the right to claim possession under that Section for the landlord comes to an end.

21. In short, neither the case put up in that line for the satisfaction of Sec.32F, nor there is evidence to that effect on record. On the contrary, the plea has been raised that the tenant is not bound to comply the provisions u/s 32F of the Act, strictly. Under these sequence I may state here that, when the tenant has utterly failed to bring the case out of clutches of Sec.32F of the Act, and if they failed to comply the statutory requirements of u/s 32F of the Act, i.e. of intimation of willingness to purchase within limitation, their right comes to an end and even tenancy rights if any stands extinguished. In support of above observations I may keep reliance on the following two precedents.

(i) Chintaman Datir / Anand Bhat, 1991 MhLJ (1)-435

(ii) Ramrao Patil / Nandini Kulkarni, 1999 MhLJ (1)-708

> *"The provision of Law and language of Sec.32F & 31 being quite, clear, period of one year as provided in Sec.32F(1) within which tenant can exercise his right of purchase cannot be extended on the ground that tenant had no knowledge about the death of landlady. Duty is not*

caste on LRs of the landlady to inform the death. Rule-20 made under the Act, prescribed the form in which the information should be given and copy thereof should be forwarded to the tribunal."

22. By keeping reliance on the above precedent, I hold that herein this case as the tenant has failed to exercise the right of purchase within the statutory period laid down u/s 32F of the Act, i.e. within two years from the date of death of either Taibai or Sitabai. Admittedly, neither there is pleadings nor evidence to that effect. Therefore, it has become easy for the Tribunal to hold that the tenant has failed to exercise his statutory right within the mandate of Sec32F of the Act.

23. Now, short Issue remains for my consideration in the light submissions made by the advocate representing the parties is that, the conclusions drawn by Ld.appellate tribunal are not consistent with the facts put forth or otherwise involved in the matter. After going through the entire text of the judgment passed by Ld.appellate tribunal, it has become evident that, while allowing the appeal the Ld.appellate tribunal has relied upon the provisions of Sec.32(O) of the Act, and used the same so as to interfere in the order of Ld.trial tribunal. On the contrary, in the present case the case was entirely different other than the case made out by the parties before the Ld.appellate tribunal. In short, provision of Sec.32(O) was not at all involved in the matter, still then, observations are based thereon which are contrary to the Law and facts involved in the matter. Any how, this is the best example, wherein I should held that, herein this case, reasonings recorded by Ld.appellate tribunal are incorrect, but, operative order is correct. After all, herein this case, interference in the order has to be considered, which is not at all necessary, particularly in the light of observations made supra. In short, in view of the observations made supra, order of Ld.trial tribunal does not sustain in eye of Law, which has been rightly set aside by the Ld.appellate tribunal, which does not call for interference therein through this Tribunal within its limited jurisdiction. With these observations, I answer the 'Point No.1 in Negative, Point No.2 in Affirmative & Point No.3 in Negative'.

24. Now, considering the old stage of the proceedings, tenor of the parties participating the matter I am of the view that, succeeding party is entitled for the costs throughout. For that purpose I would like to quantify the amount of costs to the tune of Rs.10,000/-, which shall be the reasonable one within the ambit of Rule-36 made under the Act, and proceed to pass the following order.

ORDER

The revision application stands dismissed with costs Rs.10,000/-.

The judgment & order passed by the Ld.appellate tribunal is hereby confirmed.

The petitioner shall pay the costs of Rs.10,000/- to the respondents within one month from today. Failure to which succeeding party / respondent is entitled to recover the same as the arrears of land revenue through by initiating the proceedings of execution before the tribunal of lowest grade.

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

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