

Kalam 32 F Pg No 69

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

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

No.TNC/REV/277/B/2009/P

Shri Uttam Mahadeo Gaikwad,
R/o. Garade, Tal.Purandar, Dist.Pune.

.... Applicant

VS.

- 1) Shri.Sopan Tukaram Jagdale
- 2) Shri Suryakant Tukaram Jagdale
- 3) Shri.Bharat Tukaram Jagdale
- 4) Smt.Hirabai Tukaram Jagdale
No.1 to 4 R/o. Garade, Tal.Purandar, Dist.Pune.
- 5) Smt.Sunanda Bhimrao Kotwal
R/o.Astapur, Tal.Haveli, Dist.Pune.

.... Respondents

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

Appearance :- Adv. Shri S.D.Akolkar for Revision Applicant.
Adv. Shri M.N.Gaikwad for Respondents

DATE:- 16th DECEMBER, 2016

JUDGMENT

1. Being aggrieved by the judgment & order passed by the appellate tribunal i.e. Sub-Divisional Officer, Bhore Sub Dn., Pune (hereinafter referred as the "SDO") in Tenancy Appeal No.6/2008, dt.2/3/2009, the aggrieved landlord has preferred the present revision application by invoking the provisions of Sec.76 of 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 Purandar, as the applicants or the respondents as the case may be. The facts giving rise to the present revision application can be summarized as under.

2. The lands more particularly described in para-1 of the revision application bearing Gat Nos.443,469,2548 & 2690 are as under :-

Survey No.	Gat No.	New Gat No. after division of Village	Area
131/46	443	450	33 R
131/6	469	476	6 R

165/7	2548	1360	21 R
Not available	2690	1501	61 R

Those lands were originally owned by Smt.Rangubai Vishnu Gaikwad. The applicant asserts tenancy rights in those lands as the tenant in possession since prior to the *Tillers Day* i.e. 1/4/1957. Parties to the petition are not seriously disputing the fact that on the *Tillers Day* the landlady being widow, the effect of *Deemed Purchase* in favour of the tenant in possession was postponed in her lifetime. The original landlady died on 12/2/1978 survived by her daughter Sakhubai Krishna Kanase. The applicant has specifically pleaded that after the death of widow landlady her legal heir has not exercised her right for the cultivation of the suit land within the first year from removing the legal disability for exercising the right of purchase in favour of the tenant. Therefore, the applicant, after completion of first year from the date of death of landlady, informed his willingness to purchase the suit land by issuing intimation to that effect by RPAD on 1/3/1979 and sent its copy to the Mamlatdar for the right accrued in his favour. The intimation issued to the LR of landlady returned unserved being "not accepted" though duly tendered in time. However, the intimation sent to Mamlatdar have been duly served with the authority concerned in time. Thereafter applicant has moved the application dt.21/2/86 for issuing certificate in his favour u/s 32G of the Act as a willing purchaser tenant in possession for the suit land .

3. The record amply suggest that though the intimation was received by the Tribunal for exercising the right of willing purchaser through the tenant and the application came to be filed in the year 1986. The proceeding was kept in abeyance since 27/6/89 onwards till Nov.2003 for the reasons known to the concerned ALT. Lateron proceeding continued w.e.f. 5/12/03.

4. After perusing the lower courts' record, it appears that the application moved by the tenant which was kept in sin-die, from 20/7/89 to Nov.2003. In short, the proceeding was not ever in continuation during the lifetime of Sakhubai Kanase, who died in 1992. Meantime the present applicant came on revenue record in place of Sakhubai as the owner based on Gift-Deed executed by her on 5/11/79 in respect of which M.E.No.6029 came to be certified on record on 13/6/97 for the first time. Pending the litigation before ALT the present applicant in revision application appeared and contested the proceeding by submitting evidence on affidavit. So also he made available himself for the purpose of the cross-examination. While disputing the claim of the applicant in respect of declaration u/s 32G of the Act, he has denied the correctness of the revenue entries and the possession of the applicant over the suit property on the date of *Tillers Day*. Further he has specifically contended that Laxman Jagdale was not ever in possession of suit property on the *Tillers Day*. Subsequent entries being false one, he has prayed for dismissal of the application.

5. After considering the facts put forth and submissions made, it was become evident that the land Gat No.2690 (new 1501) was not ever in possession of the applicant and dispute in respect of the said land set at rest in the judgment & order

passed in revision application No.TNC/REV/267/B/09/P. dt.3/7/2013 and the right of the applicant for *Deemed Purchaser* in respect of the said land rejected and conferred upon the person who found in possession on the date of the *Tillers Day*. Such dispute remained continue only to the extent of land Gat No.450, 476 and 1360.

6. After considering the evidence laid and facts proved the trial tribunal granted the application in respect of above three Gat Numbers in favour of the applicants and fixed the price accordingly. Being aggrieved by the said order the respondent owner has preferred appeal before the SDO which came to be dismissed by judgment & order which is under revision. Heard Ld.Adv.Akolkar for the applicant-landlord and Ld.Adv.Gaikwad for the respondent-tenant. Perused the record of both the tribunals below.

7. During the course of argument for the first time the landlord has tried to set up the claim of title and possession on the strength of Gift-Deed executed by Sakhubai, which has been reflected in revenue record through M.E.No.6029 on 13/6/97.

8. After considering the entire record and submissions made by respective advocates and findings recorded by the tribunals below in support of the findings recorded, following points arised for my determination. I have recorded my findings with reasons thereon as under :-

<u>Points</u>	<u>Answer</u>
1. Whether the judgment & order passed by tribunals below sustain in eye of law in respect of all three disputed lands for issuance of certificate u/s 32G of the Act ?	Negative in respect of Gat No.476 & affirmative in respect of rest of two Gat Nos.
2. If not, up to what extent interference in the judgment & order under revision is called for interference through this Tribunal ?	As per final order
3. What order ?	As per final order

Reasons

9. **Point No.1 & 2-** After keen perusal of entire revenue record, it reflects on record that date of death of Rangubai which is on record as 12/2/78 supported by death certificate filed on record alongwith the application dt.13/12/2016 is not seriously disputed. In continuation thereof claim of Sakhubai as the only LR of deceased landlady is also not disputed. In that context after considering the legal provisions from Sec.32F of the Act, it becomes evident that the applicant who asserts his claim whether supported by revenue record or not ? On this point revenue record placed on record consistently is in favour of applicant only in

respect of land Gat No.1360 and Gat.No.450. M.E.No.3465 copy thereof is on record at page-150 shows that the name of original tenant entered in revenue record for Gat No.1360 as ordinary tenant found in possession since from 1953-54 onwards. Furthermore M.E.No.3707 certified on 10/8/57 gives an indication that right of tenancy of original tenant i.e. the father of the applicant is recognized in respect of Gat No.450. The effect of entry certified due find the place in the column of cultivation continuously since thereafter. However, bare perusal of entire revenue record firstly M.E.No.6194 which is at page-156 suggest that there is no reference of Gat No.476 as the matter of succession of tenancy right in favour of the present applicant. Bare perusal of 7/12 extract of the land Gat No.476 from beginning till this date there is no reference in the name of present applicant or his father as the tenant in possession at any point of time. On the contrary, 7/12 extracts which are at page-127 from tahsil record, the land is in possession of the owner by showing the reference of the word "khud" in column of cultivation. The present applicant who asserts tenancy in respect of the said land never disputed the correctness of those entries at any point of time. There is no certification of entry in the column of cultivation particularly in respect of land S.No.131/6 corresponding to new Gat No.476. Suffice to say that even after keen perusal of entire record it has been amply established with the fact that there is no documentary evidence to infer the tenancy right of the present applicant particularly in respect of new Gat No.476. Not only that, but Tukaram while deposing before the trial tribunal nowhere asserted the tenancy right in respect of Gat No.476 in his chief-examination and his deposition to that effect is completely silent. Suffice to say that the revenue record supports the claim of tenancy and right of *Deemed Purchaser* in favour of present applicant only to the extent of two lands Gat No.443 & 2548 and not in respect of Gat No.469 to that extent the trial as well as appellate tribunal has committed the error of law and record which was available with them.

10. Now the point remains for my consideration, as to whether the tenant has exercised the right of purchase in time as prescribed u/s 32F(1A) and whether such right has been duly and properly exercised or not ? On this touchstone it is evident on record that the father of the present applicant has issued willingness letter to Sakhubai on 1/3/79, office copy of the letter / intimation dt.1/3/79 is at page-106 from trial courts' record. Postal ack.receipt of the said notice addressed to ALT Purandar is at page-108. Postal packet showing the conduct of the addressee Sakhubai, not to accept the tendered letter is proved by postal packet which is at page-110 from the lower court's record. After perusing all these documents on record it has been duly proved that the tenant has rightly exercised his right to purchase within two years as contemplated u/s 32F(1A) of the Act.

11. Secondly, Ld.Adv.Shri.Akolkar for the landlord strongly submitted that though the tenant has exercised willingness to purchase the suit land within the statutory period, the proceeding was not instituted in a reasonable time. As per record, though the willingness was communicated to the landlord as well as tribunal through notice dt.1/3/79, proceedings came to be filed in the year 1986

which was not even within the *reasonable time*. Therefore, the order passed by the tribunals below does not sustain in eye of law. I do not find strong substance therein. The statutory provisions has to be read together as regards removal of legal disability and effect of exercise of option in *reasonable time*. Herein this case, after the death of widow landlady the tenant has exercised option by issuing notice dt.1/3/79 and communicated the same to the landlady as well as ALT. As soon as the right has been exercised in time by expressing willingness, it was for the tribunal to take the steps for issuance of certificate u/s 32G of the Act and not for the tenant to initiate the proceedings by applying under the provisions of Mamlatdar's Courts Act, 1906. The plain reading of Sec.32G of the Act are self-explanatory about the role which the tribunal has to play while dealing with the proceedings u/s 32G of the Act. Therefore, I do not find strong substance in the objection raised by the advocate for the respondent to that effect.

12. At this juncture advocate for the respondent-landlord tried to submit that he was not joined as a party to the application. However, as observed supra I do not find strong substance therein. The respondent has already taken part in the proceedings as a party in the capacity of the respondent. He has made himself for the purpose of cross-examination. Not only that, but he has also exercised right of appeal and revision against the orders passed in the proceedings. All these facts sufficiently established that the landlord who asserts title on the basis of Gift-Deed has exercised every available remedy with him in the capacity of party to the proceedings.

13. Now the issue in respect of postponement of *Deemed Purchase* has raised before this Tribunal by the advocate for the Petitioner. Adv.Akolkar has submitted that even after the death of Rangubai, Sakhubai, who had become the landlady, was also widow and the right u/s 32F (1A) cannot be excised by the tenant through the present application which was initiated in the year 1986 and in the lifetime of Sakhubai, same was not maintainable. As against this advocate for the tenant strongly submitted that the postponement of right given u/s 32F is only for once and not successive one-by-one. Therefore, soon after the death of Rangubai right in favour of the tenant has ripened and the tenant has rightly exercised right vested with him after the lapse of one year and within two years from the date of death of original landlady. In support of his submissions Adv.Gaikwad kept his reliance on the precedent laid down by our Hon.High Court in the case of *Madhav Vahadane Vs. Shakuntalabai Kolse*, reported in 2011 (2) Mh.L.J.895, wherein His Lordship has ruled as under :-

"postponement of the right to purchase the land conferred on the tenant can take place only once."

I have gone through the above precedent very carefully and do find that the preposition of law laid down therein guides me to hold that in the present case also the tenant has rightly exercised his right of purchase within two years from the date of death of Rangubai.

14. Furthermore, the advocate for the respondent has strongly submitted that the proceeding was kept in abeyance since 20/7/89 to Nov.2003. Therefore, the further continuation of the proceeding is not proper. I do not find strong substance in this submissions simply because once the strict compliance of Sec.32F(1A) is established, as per Sec.32G the Mamlatdar has to pass an order of issuance of certificate and the tenant has nothing to do for its continuation. Duty is cast upon the tribunal to decide the matter, subject to the strict compliance of Sec.32F(1A). Herein this case, as observed supra strict compliance of statutory requirement is duly established. Therefore, the applicant-tenant cannot be held responsible as to why the proceedings were kept in abeyance for years together particularly in the lifetime of Sakhubai. On this touchstone also the objection raised by the respondent-landlord does not sustain in eye of law.

15. Last but not the least, point raised by the landlord is in respect of his claim of title. Unfortunately, herein this case, the landlord who asserts title over the disputed lands on the basis of Gift-Deed neither produced original nor its certified copy on record, nor he has tried to prove the existence, execution and truthfulness of such document which is ever compulsorily registrable & requires attestation compulsorily. In short, herein this case, the landlord has failed to make out his case in respect of title based on the Gift atleast to the extent of nature of reliefs which was within the jurisdiction of this Tribunal. In short, in view of above observations, the judgment & order passed by the tribunals below in respect of Gat No.476 does not sustain in eye of law and deserves to be set aside. At the same time, judgment & order passed by the trial tribunal and confirmed by the appellate tribunal in respect of Gat No.450 & 1360 deserves to be confirmed. For the reasons recorded supra, it is desirable to interfere in the judgment & order passed by both the tribunals below to that effect by using limited revisional jurisdiction of this Tribunal. Accordingly, I answer the point No.1 in negative only to the extent of Gat No.476 and answer the point No.2 accordingly & point No.3 as per final order and proceed to pass the following order.

ORDER

The revision application is hereby partly allowed.

The judgment & order passed by the ALT Purandar in file No.32G/Garade/2/1986, dt.12/9/2008, New file No.106/2007 is hereby modified. The order of fixation of price in respect of land Gat No.450 and 1360 is hereby confirmed. The order in respect of fixation of price in respect of Gat No.476 is hereby set aside.

The trial tribunal ALT Purandar is hereby directed to issue certificate u/s 32G accordingly in favour of the applicants only in respect of land Gat No.450 & 1360 after due compliance as per rule.

The judgment & order passed by the appellate tribunal stands varied in above terms as the order of ALT is hereby modified in above terms.

No order as to costs.

R&P called from the tribunals below be sent back.

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