

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

Presided over by : V.B.Kulkarni, Designated Member

**No.TNC/REV/74/2003/NS**

Shri Buwasaheb Madhav Kharade & otrs.,  
R/o.Shindi Bk., Tal.Man, Dist.Satara. ....Applicants

**VS.**

Shri.Tulshiram Anant Kuchekar & otrs.,  
R/o.Mahimangad, Tal.Man, Dist.Satara. ....Respondents

**Alongwith No.TNC/REV/346/B/2009/NS**

Shri Buwasaheb Madhav Kharade & otrs.,  
R/o.Shindi Bk., Tal.Man, Dist.Satara. ....Applicants

**VS.**

Shri.Tulshiram Anant Kuchekar,  
R/o.Mahimangad, Tal.Man, Dist.Satara. ....Respondent

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

Appearance :- Adv. Shri V.B.Hirve for Revision Applicants.

**DATED:- 18<sup>th</sup> NOVEMBER, 2019**

**JUDGMENT**

Facts giving rise to the present revision applications can be summarized as under.

2. Pending the revision application No.74/2003 against the order of remand passed in Tenancy Appeal No.2/2002, the Ld.trial tribunal proceeded to decide the matter as afresh. As such, even though the earlier order passed in Tenancy Appeal No.2/2002 was under challenge through revision application No.74/2003, after completion of retrial in pursuance of the order passed in Tenancy Appeal No.2/2002, same has been reached before this Tribunal in form of revision against the order of remand. In short, the order passed in Tenancy Appeal No.2/2002, dt.28/2/2003 has been duly executed, pending the revision application No.74/03. Therefore, pendency of revision application No.74/2003 becomes infructuous and the question remains before this Tribunal only to

decide the revision application No.346/2009 on merit. The facts giving rise to the present dispute are as under.

3. The disputed land Gat No.202 situated at village Shindi Bk., was originally owned by Shri.Dhondiram Chavan and other two co-owners as per their anewari. Shri.Madhav Dnyanu Kharade, was cultivating the entire land as *protected tenant* since prior to 6/12/1947. His status as *protected tenant* came to be certified through M.E.No.692, dt.65/1947. Despite of the fact that the disputed land was in possession of *protected tenant*, the said land came to be sold in court auction in execution of money decree passed in RCS No.65/56. Father of the Respondent / Tulshiram has purchased the disputed land in court auction in the name of Respondent, while he was minor on 25/1/1958. By taking the note that the land was standing in the name of minor, the effect of deemed purchased was postponed by the tenancy tribunal by order dt.18/1/1966. Unfortunately, the order of passing the postponement of "*tillers' day*" was not ever challenged. Therefore, circumstances constrained the tenant in possession to file RCS No.54/70 for declaration of status and perpetual injunction, which came to be decreed by the Civil Court in favour of the tenant. Thereafter, the tenancy proceedings u/s 32G of the Act started by the tenant through file No.32G/Shindi Bk./1/99. In the first round of litigation ALT has allowed the application and thereby, fixed the price of the disputed land u/s 32G of the Act in favour of the tenant / present Revision Petitioner. The order passed in tenancy file No.1/99 when reached before this Tribunal through revision application No.74/2003, despite of its pendency the remand order has been executed by Ld.trial tribunal and in the retrial, ALT has again fixed the price in favour of the tenant in possession by order dt.20/5/2007 in file No.19/04. In the second round of litigation while entertaining the Tenancy Appeal No.1/2008 against the fixation of price in favour of the tenant, the Ld.appellate tribunal again passed the order of remand directing the ALT to hold the enquiry as per the observations made in its judgment. Being aggrieved by the said order the tenant has preferred the revision application No.346/2009.

4. After the receipt of record & proceedings from both the tribunals below heard Ld.Adv.Shri.Hirve for the Revision Petitioner. The Respondent and their advocate though repeatedly called remained absent. Even Respondent & their advocate remained absent on earlier dates. Therefore, matter being old I heard the matter on merit in absence of the Respondent or their advocate. After perusing the record & proceedings from both the tribunals below and submissions made by Ld.Adv.Shri.Hirve for the Revision Petitioner following points arise for my determination. I have recorded my findings with reasons thereon as under :-

### **Points**

### **Findings**

1.	Whether the revision No.74/2003 remains in force, particularly when the revision against the order	Negative
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	passed by Ld.appellate tribunal in TNC Appeal No.1/2008 is under challenge before this Tribunal through revision No.346/2009?	
2.	Whether the Ld.appellate tribunal has used his proper judicial discretion while passing the order of second remand in TNC Appeal No.1/2008?	Negative
3.	Whether the judgment & order passed by the tribunal below in TNC Appeal No.1/2008, dt.22/6/2009 calls for interference therein within the limited revisional jurisdiction against the order of remand? And if yes, upto what extent?	Affirmative. As per final order.

### **Reasons**

**5. Point No.1:** After perusing the record & proceedings from both the tribunals below, it has become evident that the order passed by Ld.appellate tribunal in Tenancy Appeal No.2/2002, dt.28/2/2003 directing the remand was executed by the Ld.trial tribunal by holding retrial as per the directions of remand and still then, this revision was kept pending. In short, once the Ld.trial tribunal has held the retrial in pursuance of the directions of remand passed in Tenancy Appeal No.2/2002, the revision against such order becomes infructuous. It was for either of the parties to intimate the pendency of the proceedings in form of revision No.74/2003, before ALT or otherwise the stay ought to have been communicated to the Tribunal, so as to stop further proceedings before ALT in pursuance of the pendency of revision application No.74/2003. Failure to do so from either of the parties, it has become evident on record, in view of revision application No.346/2009 in respect of the same property, same relief and between the same parties, earlier revision application become infructuous. With these observations, I answer the 'Point No.1 accordingly, holding the revision application No.74/2003 as infructuous'.

**6. Point No.2&3:** After perusing the entire record & proceedings received from both the tribunals below, it has become evident that the name of Mahadu Dnyanu Kharade, has been certified in revenue record through M.E.No.692, which came to be certified on 6/5/1947. In the light of certification of said entry, name of the tenant came to be recorded in column of cultivation and his name is appearing till 1957-58. In short, 7/12 extracts on record itself indicates and sufficient to hold that the tenant Mahadu Kharade, was the lawful tenant in possession since prior to and particularly on the "*tillers' day*" i.e. 1/4/1957. Therefore, subsequent events took place in form of attachment and sale of the disputed property in court auction in the execution proceedings of decree passed in RCS No.54/70, nowhere affects the statutory status of the tenant in possession as a *protected tenant*. Not only that, but after perusing the entire record,

it has become evident that the auction purchaser has purchased the disputed land on 25/1/1958 i.e. after 1/4/1957. Therefore, the interest created in favour of the auction purchaser / minor, neither affects the statutory status of tenant in possession as "*deemed purchaser*" nor the issue of postponement of "*tillers' day*" on the ground of minority of the auction purchaser will remain in force. In short, the order passed by Mamlatdar in respect of the postponement of "*tillers' day*" dt.18/1/1966 is without jurisdiction and cause of action therefor. Once it has been accepted that the auction sale was effected on 25/1/1958, particularly when the *protected tenant* was in actual physical possession, the subsequent events took place creating interest in the property does not affected the statutory effect of "*deemed purchase*". Furthermore, it has become evident that in pursuance of the decree passed in RCS No.54/70, which has been reached to its finality itself sufficient to hold that the *protected tenant* was and is in possession of the disputed land as on the "*tillers' day*" , and since after his death LR's have continued their possession as the lawful tenant. Therefore, once the decree passed in RCS No.54/70 has reached to its finality granting the decree of perpetual injunction in favour of the tenant in possession, same does not required to be reopen by invoking the remedy of remand successively. On the other hand in view of decree passed in RCS No.54/70 in favour of the tenant in possession, which has reached to its finality, the order of remand passed in revision application No.NS/III/10/76 has also become infructuous.

7. In view of the observations made supra, if the tenant is in lawful possession of the land on the "*tillers' day*", he has nothing to do for initiating the proceedings for "*deemed purchase*", but, it was for the tribunal to hold the proper enquiry u/s 32G of the Act. Unfortunately, the Ld.trial tribunal has not looked into all these aspects while passing the order dt.18/1/1966 in respect of the postponement of "*tillers' day*" . Therefore, it shall have to be presumed that the tenant has become the "*deemed purchaser*" on 1/4/1957 itself, whereby, the subsequent transfer or auction sale does not affects his right.

8. Unfortunately, in the present *lis*, while pending the revision against the order of reference made in RCS No.54/70, the revision application was pending against the order passed in Tenancy Appeal No.95/76 and the revisional authority i.e. MRT remanded the reference made by the Civil Court for retrial. In my view, once the decree passed in RCS No.54/70 has reached to its finality, reopening of enquiry in pursuance of remand order passed in revision application No.MRT/NS/III/10/76 does not survive. It was for the Defendant / landlord in RCS No.54/70 to prefer the appeal against the decree on the ground of pendency of revision No.10/76, but, he has not done so. Therefore, the order of remand in revision No.10/76 has become infructuous. In short, the Ld.appellate tribunal has failed to take into consideration the effect of deemed purchase as on 1/4/1957, which was ever in favour of the Petitioner, which would not affect the

subsequent transfers in favour of the Respondent. Therefore, the order passed by Ld.tribunal in respect of the fixation of price u/s 32G of the Act being based on sound reasonings in support thereof deserves to be restored, at the same time the order of remand passed by Ld.appellate tribunal in Tenancy Appeal No.2/2002 deserves to be set aside and to declare that in view of fresh revision after the remand order, which was under challenge in revision application No.74/2003 has become infructuous. For all the reasons it has become necessary to interfere in the order passed by Ld.appellate tribunal in both the revisions and to restore the order passed by ALT in respect of the fixation of price. With these observations, I answer the 'Point No.2 in negative and Point No.3 as per final order' and proceed to pass the following order.

### **ORDER**

The revision application No.74/2003 being infructuous stands disposed of.

The revision application No.346/2009 is hereby allowed.

The judgment & order passed by Ld.appellate tribunal in Tenancy Appeal No.1/2008, dt.22/6/2009 is hereby set aside and the order passed by ALT in tenancy file No.19/04, dt.20/5/2007 in respect of the fixation of price of the disputed land 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.