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

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

No.47/B/2001/NS

Smt.Jai Dagdu Bodre (Ramoshi)
D/H—
Smt.Putalabai Namdeo Khomane,
R/o.Malegaon Bk.(Phata No.23),
Tal.Baramati, Dist.Pune. .....Applicant

VS.

Shri.Ajitkumar Jindas Rajvaidya
D/H—
Shri.Rhrishikesh Ajitkumar Rajvaidya & otrs.,
R/o.Shukrawar Peth, Phaltan,
Tal.Phaltan, Dist.Satara. .....Respondents

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

Appearance :- Adv. Shri N.B.Bodre for Revision Applicant
Adv. Shri J.P.Dhaytadak for Respondents

DATE:- 5th MARCH, 2019

JUDGMENT

Being aggrieved by the judgment & order passed by Ld.appellate tribunal i.e. Sub-Divisional Officer / Ld.appellate tribunal, Phaltan Sub Dn., Phaltan (hereinafter referred as the "appellate tribunal") in Tenancy Appeal No.22/96, dt.30/12/2000, the aggrieved appellant /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"), on the grounds more particularly set out in revision application. Facts giving rise to the present revision application can be summarized as under.

2. Smt.Jaibai Bodre, was the original owner of the land. She was widow. On 17/8/63 she has executed lease-deed of the disputed land in favour of Shri.Rajvaidya. The lease was for 10 years. Therefore, after the expiry of lease period or even prior to it *lis* was initiated between the parties for the relief of possession. Landlady had filed an application u/s 31 r/w 20 of the Act, for possession which came to be rejected by order dt.3/6/1970. That matter went upto MRT in form of revision application No.721/71, which came to be decided by order dt.10/8/72, whereby, the order of ALT was confirmed with certain positive observations to the effect that the right of statutory purchase u/s 32(O) of the Act, stands postponed being the landlady was widow, but such right have ever not lost. Even prior to that proceedings landlady had filed an application u/s 32P of the Act, which came to be rejected by order dt.23/3/76. The order of rejection though went upto MRT, the claim of the landlady came to be dismissed by order dt.27/8/93. Even the parties have not disputed the fact that the landlady died on 20/10/94. After the death of landlady the tenant moved proceedings u/s 32(O) of the Act, which came to be conducted through file No.32(O)/Thakurki/6/81, which came to be decided on 31/7/96, whereby, the Ld.trial tribunal has fixed the price of the land under the provisions of sec.32G of the Act. Therefore, the aggrieved landlord preferred Tenancy Appeal No.22/96, which came to be decided by judgment & order dt.30/12/2000 and came to be dismissed on merit. Pending the Tenancy Appeal, even the Ld.trial tribunal was pleased to issue certificate u/s 32M of the Act, in favour of the tenant. As the price fixed was recovered after the decision rendered in Tenancy Appeal No.22/96, the aggrieved landlord has preferred the present revision application on the legal as well as factual grounds more particularly set out in the revision application.

3. After the receipt of record & proceedings from both the tribunals below, heard Ld.Adv.Shri.Bodre for the revision petitioner and Ld.Adv.Shri.Dhaytadak for the respondents. After perusing the R&P from both the tribunals below as well as after considering the submissions made by respective advocates in support of their rival contentions before this Tribunal, following points arise for my determination. I have recorded my findings with reasons thereon as under :-

	Points	**Findings**
1.	Whether the concurrent findings recorded by tribunals below, fixing the price of the disputed land in favour of the tenant is proper, correct and legal?	Affirmative
2.	If yes, whether the judgment & order under revision calls for interference therein through this Tribunal within its limited revisional jurisdiction u/s 76 of the Act?	Does not survive

Reasons

4. Point No.1&2: After perusing the R&P of both the tribunals below containing the certified copies of earlier *lis* between the parties in respect of the same subject matter, the facts which has been duly proved or otherwise does not call for independent evidence can be summarized as under :-

5. Original owner / landlady was widow who had executed the registered lease-deed dt.17/8/63 in favour of the opponent / tenant for a period of 10 years. According the rent of the land @ Rs.200/-p.a. was fixed. Not only that, but the landlady had received rent at the said rate for 10 years in advance amounting to Rs.2000/- and thereby, the lessee has been put in possession for the period of 10 years i.e. upto 16/8/73. In short, the relations between the parties as landlord and tenant brought into existence through registered lease-deed after the *"tillers' day"* . In consonance thereof, after perusing the judgment & order passed by the MRT in revision application No.NS/XI/721/71, dt.10/8/72, it has also become evident that the order of postponement of *"tillers' day"* on the ground of legal dis-ability of the landlady was upheld with observation that though the right has been postponed it does not have lost at all. The said order passed in No.NS/XI/721/71, has reached to its finality. Not only that, but after perusing the judgment & order passed by MRT in revision No.NS/XII/9/76, dt.9/2/78, it has become evident that, the application moved by the landlady for possession u/s 32P of the Act, has been rejected and reached to its finality by the order passed by MRT. In that context, it has become evident that, the submissions made by Ld.advocate for the petitioner that if the landlady is under legal dis-ability the provisions of Tenancy Act are not applicable and the cultivation through the lessee be treated as cultivation by the landlady herself does not sustain in eye of Law. The effect of legal dis-ability is only to the extent of postponement of *"tillers' day"*, but does not come into way, to create the tenancy by the landlady though under legal dis-ability. Therefore, once the relationship of landlord and tenant has reached to its finality, it has become evident that, subsequent action taken by the tenant is based upon the effect of death of landlady and subsequent action taken by the tenant in pursuance thereof. Admittedly, herein this case the landlady died on 20/10/94. M.E.No.790 to that effect has been certified in revenue record.

6. By keeping reliance on M.E.No.790, the revision petitioner has further tried to submit that even at the time of certification of M.E.No.790 the LR of the original landlady was also under legal dis-ability and was the widow. Therefore, subsequent action taken by the tenant by issuing notice dt.14/8/95

does not sustain in eye of Law. I do not find strong substance therein. It is well settled principle of law, that the postponement of *"tillers' day"* as per Sec.32F of the Act, is permissible only for once and not successive. In support of above observations I may keep reliance on the precedent laid down in the case of ***Madhav Wahadne / Shakuntalabai, 2011(2) MhLJ-895.*** The proposition of law laid down therein can be summarized as under-

> *"The postponement of the right of purchase the land, confer on the tenant by the provisions of the Act can take place only once and further postponement on same or new ground is not permissible".*

Once the fact of issuance of notice dt.14/8/95 after the demise of the landlady being issued within one year it has been amply proved that the tenant has exercised his option well in time and in proper form.

7. At this juncture Ld.advocate for the revision petitioner called my attention towards the precedent laid down by our Hon'ble High Court, in the case of *Ramesh Dangre / Vithabai, 1998(4)-BCR-761.* I have gone through the above precedent very carefully. With utmost humbleness I may state here that the facts and circumstances of the case at hand are quite distinct rather than the facts and circumstances of the case referred supra. In the case referred by the advocate for the petitioner, issue of exercise of right of purchase within statutory period was in dispute. Herein this case, once the fact of postponement of *"tillers' day"* and date of death of the original landlady is proved and if examined consistently that the issuance of notice dt14/8/95, I am of the view that there is no error of fact or Law either in issuing of notice or effective service thereof to the landlord. Therefore, principle laid down in the above precedent is not applicable to the case at hand.

8. On the contrary as observed supra, it has become evident that, in the light of judgment & order passed in earlier *lis* between the same parties though reached upto MRT, reached to the finality in favour of the tenant. Therefore, there is no reason to have a determination of tenancy u/s 70(b) as afresh. As a fact on record, it has become evident that, after passing the order u/s 32G of the Act, and determination of price by the tribunal below, on behalf of the landlady her POA has received the amount of price. Not only that, but despite of compromise being effected by keeping it aside the tenant in possession has deposited the amount of price u/s 32G of the Act, through challan dt.5/11/96. Attested copy thereof is filed by the respondent on record alongwith application dt.1/3/2019. This fact amply suggests that even by ignoring the effect of role played by POA, tenant has duly complied the compliance of order u/s 32G of the Act, and as such the order passed u/s 32M of the Act, has reached to its finality. Under these circumstances, I do find that there is no either error of fact or error of Law committed by both the tribunals below while passing the orders under challenge. On the contrary in

view of the observations made supra it indicates that the tribunal below has rightly considered the facts on record and applied the correct provisions of Law while deciding the matter at hand. Therefore, same does not call interference therein at the hands of this Tribunal, within its limited jurisdiction. It is well settled principle of law, that this Tribunal has got very limited jurisdiction to interfere in the order passed by the tribunal below and if same is not suffered by any error of Law, re-appreciation of evidence through this Tribunal is not permissible. In support of above observations I may keep reliance in the case of ***Gangubai / Kishanrao, 2012 ALL MR(5)-114.*** The proposition of law laid down therein can be summarized as under:

> *"The Spl.Dy.Collector dealt with the Mamlatdars order as an appellate authority and was, therefore, entitled to appreciate the evidence and come to the own conclusion. The Tribunal while exercising its powers u/s 76 of the B.T.& A.L.Act, had no such power. While dealing with revision, the Revenue Tribunal has no power to re-appreciate / discuss evidence and to come to its own conclusion, while exercising its power u/s 76 of the Act."*

9. By following the Law laid down in the above precedent I do find that the judgment & order passed by both the tribunals below being concurrent in nature does not call for any interference therein and answer the 'Point No.1 in affirmative and Point No.2 as does not survive' and proceed to pass the following order.

ORDER

The revision application stands dismissed.

The judgment & order passed by Ld.appellate tribunal 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.