

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

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

**No.P/VI/1/2017**

Shri Baban Jijaba Wable  
R/o.Mudhale, Tal.Baramati, Dist.Pune.

.....Applicant

**VS.**

- 1) Shri Gaumtamchand Uttamchand Marwadi
- 2) Shri.Bhalchandra Nemichand Marwadi  
Both R/o.Landge Ali, Behind Mohini Hotel,  
Ward No.5, Saswad, Tal.Purandar, Dist.Pune
- 3) Shri Vasant Ramchandra Ratnaparkhi  
R/o.Tandulwadi Ves Baramati, Dist.Pune
- 4) Shri Ananta Ramchandra Ratnaparkhi  
R/o.Malegaon Bk, Tal.Baramati, Dist.Pune.

.....Respondents

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

Appearance :- Adv. Shri Konde for Revision Applicant  
Adv. Shri R.T.Bankar for Respondents

**DATE:- 29<sup>th</sup> JANUARY, 2018**

**JUDGMENT**

1. Being aggrieved by the judgment & order passed by Ld.appellate tribunal i.e. Sub-Divisional Officer, Baramati Sub Dn., Baramati (hereinafter referred as the "appellate tribunal") in Tenancy Appeal No.6/2016, dt.29/5/2017, 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"). Past history of series of litigation took place between the parties can be summarized as under.

2. One Shri.Mohanlal Marwadi was the original owner of the suit properties. He died in 1954 issueless intestate living behind his brother Uttamchand as the only Class-II LR whose name is recorded through M.E.No.2408. Thereafter passage of time Uttamchand also reported dead living behind the present Respondent No.1 as his LR. One Jijaba Wable was in possession the suit land since 1934 onwards. As per the case of land-owner, Jijaba came in possession of the suit property on the basis of usufruct mortgage, dt.24/7/39 for the period of 7 years. In the year 1951 the owner had filed RCS No.240/51 for the redemption of the suit property against Jijaba. Pending the suit Jijaba filed a separate RCS No.46/59 simplicitor for the perpetual injunction claiming right of possession as a tenant on the "*Tillers Day*". Accordingly reference of tenancy issue was made in the proceeding of RCS No.46/59. The said reference ultimately ended with the finding of the tenancy in favour of Jijaba in revision application No.62/66, which reached to its finality. Thereafter Jijaba initiated the proceeding u/s 32G of the Act, before ALT. in the first round of litigation which reached upto Hon'ble High Court through Writ Petition No.42/80, matter was remanded for fresh enquiry to ALT Baramati. After the order of remand through Hon'ble High Court, re-trial of the proceeding initiated. ALT has decided the matter after remand by order dt.29/9/97 and thereby, declared the sale ineffective recording the findings that the holding of the tenant was excess on the date of "*Tillers Day*". The said matter also went upto Hon'ble High Court. Writ Petition No.3515/2001 decided by Hon'ble High Court by order dt.2/9/2002 and thereby, confirmed the findings recorded by tribunals below, wherein statutory sale in favour of tenant declared ineffective on the point of excess holding and also confirmed the order of possession in favour of the landlord as per the observations made by MRT in its judgment.

3. After the judgment & order passed by Hon'ble High Court in Writ Petition No.3515/2001, present applicant / tenant has moved fresh application u/s 32G of the Act, for statutory ownership of the suit land in his favour. The said proceeding bearing No.32G/B-4/12 came to be decided by ALT by order dt.18/2/2013, wherein the trial tribunal has issued certificate u/s 32G in favour of the tenant. The said matter at first round of litigation taken before Ld.appellate tribunal in tenancy appeal No.9/13 filed by the landlord. The said appeal came to be decided on merit and order of remand was passed in favour of the landlord for the grounds mentioned therein. After remand order passed in tenancy appeal No.9/13, ALT Baramati has decided the proceedings by holding re-trial. By order dt.4/7/2016 ALT Baramati, rejected the application of the tenant for the claim of "*Deemed Purchaser*" in respect of the suit property. Thereafter the aggrieved tenant has taken the matter before Ld.appellate tribunal i.e. SDO Baramati by preferring tenancy appeal No.6/16. The appeal came to be dismissed. Being aggrieved by the said judgment & order dt.29/5/2017 the aggrieved tenant has preferred the present revision application against the concurrent findings recorded by the tribunals below on the grounds more particularly set out in revision application.

4. After receipt of R&P from tribunals below, heard Ld.Adv.Konde for the Revision Petitioner & Ld.Adv.Bankar for the Respondents. After perusing the R&P received through tribunals below and submissions made by respective advocates before this Tribunal and precedents relied by them on the law points involved in the matter, following points arise for my determination. I have recorded my findings with reasons thereon as under :-

<u><b>Points</b></u>	<u><b>Findings</b></u>
1. Whether the Judgment & order with concurrent findings by tribunals below calls for interference therein through this Tribunal within its limited jurisdiction u/s 76 of the Act?	No
2. What order in respect of costs ?	As per final order

### **Reasons**

**5. Point No.1:** The Ld.Adv.Konde for the Revision Petitioner while challenging the order under revision strongly submitted that though the revision preferred is against the concurrent findings recorded by the tribunals below, both the tribunals have utterly failed to follow due process of law for holding the enquiry contemplated u/s 32G of the Act. He has strongly submitted that neither in earlier proceedings which went upto Hon'ble High Court and ultimately reached to its finality, the issue of holding of tenant was not properly and correctly dealt with, nor the tribunals below while deciding the matter at hand has concluded the findings of holding of the tenant on the material date within the meaning of Sec.5 of the Act.

6. At this juncture I would like to make it clear that the advocate has not disputed the fact of findings recorded by Hon'ble High Court in Writ Petition No.3515/2001 which came to be decided on 2/9/2002. While deciding the said Writ Petition, Hon'ble High Court has observed that the order passed by the tribunals below does not call for interference, wherein the enquiry in respect of holding of the tenant on the "*Tillers Day*" found excess and on that sole ground statutory sale has been declared ineffective as against the tenant. The said order dt.2/9/2002 has nowhere pleaded by the applicant while moving the fresh application dt.20/9/2012, whereby, the proceeding of file No.32G/kuka/34/12 initiated. In the given set of fact, at the outset I would like to state here that neither the application moved by the tenant, whereby fresh proceedings initiated, discloses, as to how a fresh proceedings can be initiated, particularly when the order passed by Hon'ble High Court in Writ Petition No.3515/2001, dt.2/9/2002, has nowhere challenged. In short, while moving the application for initiating fresh proceedings by anti-clockwise, same is

suffered by suppression of material facts from the tribunals below, wherein initially Ld. trial tribunal was ever pleased to grant certificate u/s 32G of the Act, in ignorance of findings and orders passed by Hon'ble High Court in Writ Petition No.3515/2001. In my view after perusing the entire proceedings it has become crystal clear that the issue of excess holding of the tenant on the "Tillers Day" has reached to its finality and it has been observed by MRT as well as Hon'ble High Court in earlier proceedings, which has been reached to its finality. While deciding revision application No.MRT/60/B/99/P, dt.30/4/2001, then Hon'ble Member has observed as under :-

*"According to me when it is held that tenant is in excess of land than the ceiling area then he cannot be said as deemed purchase and the sale in obviously to be declared as ineffective."*

7. The above observations made by the Member, MRT has been confirmed by the Hon'ble High Court while deciding the Writ Petition No.3515/2001. I would like to quote the observations made by Hon'ble High Court while deciding the Writ Petition No.3515/2001, the observations made by the Hon'ble High Court which runs as under :

*"All the authorities below have unanimously held that the tenant is not entitled to purchase the land considering his holding of agricultural land, which is more than ceiling area fixed under the Tenancy Act ."*

8. In my view, verdict recorded by Hon'ble High Court with the reasonings quoted supra, which has reached to its finality has closed the subject forever so as to enquire the holding of tenant as a fresh by moving anti-clockwise litigation and i.e. without challenging the verdict recorded in Writ Petition No.3515/2001. The advocate for the Revision Petitioner has not any other ground of fact or Law, as against the order under revision. He has submitted that in earlier proceedings thorough enquiry was not made on the point of holding of the tenant on the "Tillers Day". In my view, this vague statement is not sufficient to overlook the findings recorded in earlier proceedings or even observations made by Hon'ble High Court while deciding the Writ Petition No.3515/2001. In short, anti-clockwise litigation initiated by the tenant after the lapse of 13 years from the judgment & order passed in Writ Petition No.3515/2001 is nothing but, suppression of material facts from the tribunals below.

9. At this juncture Ld. advocate for the Petitioner strongly submitted that the judgment & order passed in earlier proceedings are non-est in eye of law and does not require to be challenged. In support of his submissions advocate has relied upon precedent laid down in, *A.V.Papayya Vs. Government of A.P., 2007(4) SCC 221*. By keeping reliance on the said precedent he has submitted that while conducting the proceedings in earlier round the present Respondents have played fraud with the Tribunal and therefore, same are non-est. In view of the observations made in Para supra by me, herein this case, fraud has

been committed by present Petitioner by suppressing the earlier orders passed against him, which are in force. Therefore, law laid down in the above precedent is not at all helpful for the applicant, but, guidelines therein are against him.

10. Further in support of his submissions on the point of nature of enquiry of holding in the proceedings u/s 32G as per Sec.5 of the Act, the advocate for the Revision Petitioner kept his reliance on the precedent laid down by our Hon'ble High Court in the case of *Bhiva Kopnar Vs. Sonba Kopnar, 1997(3) Bom/C/R/534*. I have gone through the above precedent very carefully and do find that the facts and circumstances of the case at hand are quite distinct than the facts involved in the precedent supra. Therefore, with utmost humbleness I may state that the law laid down therein is not applicable to the case at hand. With these observations, I hold that the revision application moved by Revision Petitioner / tenant as against the concurrent findings recorded by the tribunals below is hopelessly devoid with merits. Not only that, but, also suffers from suppression of material facts from the tribunals below while initiating fresh */is* in the given form is anti-clockwise so as to prolong the delivery of possession in consonance with the directions given by Hon'ble High Court in Writ Petition No.3515/2001, decided on 2/9/2002. With these observations, I hold that the findings recorded by tribunals below which are concurrent in nature and that too by taking into consideration the judgment & order passed by the higher authorities including Hon'ble High Court in earlier proceedings are based on sound reasoning and same does not call for interference therein. In short, revision application being hopelessly devoid with merits, I answer 'Point No.1 in Negative'.

**11. Point No.2:** Herein this case, observations made supra are self-explanatory to quote here that the Revision Petitioner / tenant who is in possession by over-looking the verdict given by Hon'ble High Court in Writ Petition No.3515/2001, dt.2/9/2002, has not only failed to comply the directions therein, but also by initiating the subsequent proceedings by suppressing material facts, which are deadly against him, tried to play fraud with the justice delivery system. In the given set of facts, I am of the view that this is a fit case where exorbitant cost has to be awarded against the Petitioner & in favour of succeeding party, who has been kept away from the fruits of order which are ever in force since 2/9/2002 onwards. For that purpose, I may invoke powers of this Tribunal as laid down in Rule-36 made under the Act, w.e.f. 2013. As observed supra, anti-clockwise litigation initiated by applicant by suppressing the effect of order passed by Hon'ble High Court in Writ Petition No.3515/2001 is nothing, but proceedings initiated **with frivolous** pleadings for protecting the interest of possession over the disputed land, for which the present Petitioner is not entitled. By considering the scope of Rule and facts of the present case, I am of the view that the Petitioner should be saddled with compensatory cost of Rs.20,000/- which should be paid to the succeeding party.

12. In addition thereto, I am of the view that the Tribunal under the Act, is the "Court" for the purpose of deciding the matter before it. Therefore, provisions of CPC are equally applicable, particularly when ends of justice calls for that purpose. Herein this case, despite of order of Hon'ble High Court dt.2/9/2002, the present Petitioner is protracting the litigation so as to effect of delivery of possession. Therefore, I am of the view that this is a fit case where the Tribunal should invoke the provisions of Order-20 Rule-12(1)(c) of the C.P.C., so as to initiate the enquiry in respect of future mesne-profit. With these observations by making concluding observations I answer 'Point No.2 accordingly' & proceed to pass the following order.

### **ORDER**

The revision application stands dismissed with costs.

The judgment & order passed by Ld.appellate tribunal which is under challenge is hereby confirmed.

The Petitioner shall pay compensatory costs of Rs.20,000/- to the succeeding Respondent within one month from the date of order.

In addition thereto separate enquiry under Order-20, Rule-12(1)(c) of CPC, in respect of future mesne-profits from the date of order till actual delivery of possession be made as against the present Petitioner.

Interim order of Stay granted stands vacated.

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

Intimation of this order be sent to both the parties & lower tribunals so as to act accordingly.