

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

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

**No.TNC/REV/169/2003/SS**

Shri Atmaram Babu Gawade,  
R/o.Kasegaon, Tal.Walwa, Dist.Sangli.

.... Applicant

**VS.**

1) Shri.Narayan Maruti Gurav (Mohite)  
R/o.Kasegaon, Tal.Walwa, Dist.Sangli.

2) Shri.Sadashiv Dattu Gurav (Mohite)  
D/H---

Shri.Sambhaji Sadashiv Mohite (Gurav),  
R/o. Vinayaknagar Road No.1, Opp.Shivparvati Mandir,  
Islampur, Tal.Walwa, Dist.Sangli.

.... Respondents

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

Appearance :- Adv. Shri S.S.Patil for Revision Applicant  
Adv. Shri Omkar Patil o/b Adv.Mali for Respondents

**DATE:- 9<sup>th</sup> MARCH, 2017**

**JUDGMENT**

1. The aggrieved party / 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") against the judgment & order passed by the appellate tribunal i.e. Sub-Divisional Officer, Walwa Sub Dn., Islampur (hereinafter referred as the "SDO") in Tenancy Appeal No.17/03, dt.20/10/2003 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 Walwa-Islampur, 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 suit land old S.No.589/2 (new Gat No.2049) adm.1H 6R to the extent of full area situated at Village Kasegaon owned by the family of Opponents. The applicant has filed an application u/s 32G of the Act contending that his father was the *protected tenant* in possession over the suit property since prior to the "*Tillers*

*Day*". Therefore, in view of the provisions of Sec.32G of the Act, the applicant be declared as "*Deemed Purchaser*" and certificate to that effect may kindly be issued in his name.

3. The proceedings came to be registered before the ALT Wala-Islampur through file No.Kasegaon/32G/12/2000. The Opponents have appeared and contested the same. They have specifically denied the assertion of tenancy rights of the applicant or his forefathers at any point of time. They have specifically contended that the family of the Opponents is exclusively in lawful possession of the suit property since long prior to the "*Tillers Day*" and therefore, neither there was any relationship with the forefathers of the applicant as the tenant and landlord nor the applicant has got any such statutory right for the relief of declaration sought. With these pleadings the Opponents have prayed for the dismissal of the application.

4. Initially the proceedings were conducted before the ALT, which came to be decided on merit by judgment & order dt.16/6/2003, whereby, the Ld.trial tribunal rejected the application moved by the applicant / tenant, holding that neither the applicant is the tenant in possession nor his forefathers were the tenant in possession on the date of "*Tillers Day*". Therefore question of grant of declaration sought does not survive.

5. Being aggrieved by the said judgment & order passed by the ALT, the applicant / tenant preferred an appeal before the Ld.appellate tribunal bearing Tenancy Appeal No.17/03 which came to be dismissed by judgment & order dt.20/10/2003. Being aggrieved by the said judgment & order passed by the Ld.appellate tribunal the aggrieved tenant has preferred the present revision application on the grounds more particularly set out in the revision application.

6. After perusing the R&P received through the tribunals below, submissions made by respective advocates for the applicant as well as opponents before this Tribunal, following points arise for my determination. I have recorded my findings with reasons thereon as under :-

<b><u>Points</u></b>	<b><u>Findings</u></b>
1. Whether the concurrent findings recorded by the tribunals below, which are under revision sustain in eye of law ?	Yes
2. If not, whether it calls for interference therein through this Tribunal as prayed for ?	Does not survive

### **Reasons**

7. **Point No.1:** After perusing the R&P received through ALT and the submissions made by advocate for the applicant, it appears on record that the claim of the applicant is mainly based upon M.E.No.9096, which came to be recorded in revenue record on 23/7/1947. However, after perusing the said entry, it appears on record that though M.E.No.9096 was taken in register, it was not ever duly certified by the Competent Authority. Therefore, the revenue authorities proceeded to take the note of un-certified M.E.No.9096 in the column of 'other rights' of the suit land by making the reference thereof in **Pencil**. It is pertinent to note here that, there is no evidence on record to show that the said M.E.No.9096 was ever sub-judice at any point of time before the competent revenue authorities. Therefore, the party against which the dispute was not ever pending and which was not certified at any point of time, it should not have been recorded in revenue record by giving its reference in **Pencil**. Even prior to MLRC, 1966 use of **Pencil** was recognized only in respect of the entries which was taken on record, but, sub-judice before the Competent Authorities. Herein this case, the so called M.E.No.9096 was not ever sub-judice since from the date of its entry till this date.

8. Now, second question remains for my consideration is that of the effect of said **Pencil entry**. After perusing 7/12 extracts of the suit property from 1939-40 to 1979-2000, which are at page 17 to 27 from lower court's file, it amply suggest that the effect of M.E.No.9096 which was not ever certified has not ever given in the column of cultivation. From 1939-40 onwards till 1999-2000 the name of the owner is appearing in the column of cultivation. Suffice to say that though M.E.No.9096 was taken by the authority neither it was ever certified nor it has been given proper effect in column of cultivation at any point of time and particularly during the lifetime of father of the present applicant. In short, the father of the applicant through whom the present applicant claims right of tenancy u/s 32G, do not find any documentary evidence in respect of the details of tenancy except M.E.No.9096, which was not ever certified at any point of time.

9. Thirdly, after perusing M.E.No.13190 which is at page-5 from the record of ALT, it amply suggest that the disputed land was owned by Rayat Inamdar and said land has been regranted in the name of occupant Inamdar by order dt.20/2/60. The owner in whose name regrant was made by the revenue authorities paid the requisite Nazarana amount and accordingly, M.E.No.13190 came to be certified on 6/4/60. Since thereafter name of the owner as Class-II occupant certified in revenue record and in the column of cultivation name of the occupant is shown as cultivator. The said M.E.No.13190 itself sufficient to show that there was no tenant in possession on the "*Tillers Day*" who can file an application for certificate u/s 32G against the occupant after the knowledge of regrant has been made. Herein this case, neither the father of the applicant nor the present applicant had ever exercised right of purchase after the regrant of the land in whose favour regrant was issued.

10. Furthermore, it is pertinent to note here that, even at the time of instituting the */is* after the death of father, the present applicant had never ascertained or even raised the dispute of the cultivation claiming the actual physical possession

over the suit property as against the occupant whose names are appearing in the column of occupancy. Since after the implementation of MLRC, 1966 and particularly, in the light of rules made thereunder in form of Maharashtra Land Revenue Record of Rights (Preparation and Maintenance) Rules, 1971, the person who claims to be in possession other than the occupant has to raise such dispute and the revenue authority not below the rank of the Tahsildar shall have to decide such dispute within the same year when such dispute was raised. In short, atleast since 1971 onwards till 2000 when the */is* has been initiated the applicant ought to have raised the dispute regarding the column of cultivation , but, such dispute was not raised or even not pending before to the Competent Authority till this date. In the light of above observations assertion put forth by the applicant regarding the tenancy do not find details thereof as to when such tenancy was created, with whom it was created and what was the mode of payment of rent if any agreed therefore. In short, except fiscal uncertified entry No.9096, there is no *Iota of evidence* to consider the claim of the applicant as the tenant in possession, even prior to the "*Tillers Day*" or on the date when the */is* was initiated.

11. In view of the above observations it has become crystal clear that there was no *Iota of evidence* either in form of pleadings or proof in form of document or oral evidence to substantiate the plea of tenancy raised, nor it has been recognized or ever recorded in revenue record. Therefore, judgment & orders passed by the tribunals below, which are concurrent in nature, find it based on sound reasonings in support thereof, which does not call for interference through this Tribunal in its limited jurisdiction u/s 76 of the Act. With these observations, I 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 with cost of Rs.5000/-.

The applicant is directed to pay the costs of Rs.5000/- to the successful party-opponent within three months. Failure to which, certified copy of this judgment & order be sent to ALT Walwa-Islampur with direction to recover the amount of cost awarded as the arrears of land revenue and to pay the same to the successful opponent / owner and to intimate, the manner in which the order of this Tribunal has been complied with, with effective correspondence.

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

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