

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

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

No.P/VIII/9/2018

Shri Ananda Genu Kaldoke
D/H—Shri.Subhash Ananda Kaldoke & otrs.,
R/o.Sadumbre, Tal.Mawal, Dist.Pune.Applicants

VS.

Madhukar Dattatraya Kulkarni
D/H—Shri.Arun Madhukar Kulkarni & otrs.,
R/o.21, Pratibha Apartment, Ideal Colony,
Kothrud, Pune-38.Respondents

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

Appearance :- Adv. Shri J.P.Dhaytadak for Revision Applicants.
Adv. Shri S.G.Patil for Respondents

DATE:- 11th FEBRUARY, 2019

JUDGMENT

(As per rule 13(4) made under the Code)

Read the judgment & orders passed by both the tribunals below.
Heard Ld.Adv.Shri.J.P.Dhaytadak for the revision petitioners &
Ld.Adv.Shri.S.G.Patil for the respondents. After perusing the judgment &
orders passed by both the tribunals below, it has become evident that, the
tribunals below have recorded concurrent findings. While recording the
findings in concurrent nature, the tribunals below come to the conclusion
that the applicant / tenant is not the person entitled for declaration u/s 32G
of the Act, as the tenant in possession on 1/4/1957. Furthermore, tribunals
below have observed that the tenant is not in possession as the tenant when
the proceedings came to be initiated in the year 1990. After perusing the
documents in form of revenue record, it amply suggests that the landlord is
in possession since after 1957-58 till 1980-81. For the first time in the year
1981-82 dispute of cultivation has been raised by the tenant under the
provisions of MLRC. That proceeding was not before the Mamlatdar u/s 70b
of the Act. The tenant has not claimed right u/s 32G of the Act, but, u/s
32(O) of the Act, i.e. tenancy after 1/4/1957. In short, the LR's of the

deceased tenant has not either challenged the earlier dis-possession of his father from the land nor he has claimed right of deemed purchaser as the tenant in possession on 1/4/1957. On the contrary, present proceedings came to be initiated in the year 1990 after the decision of column of cultivation for the year 1981-82. In short, the applicant / tenant has admitted that he is not in possession prior to 1981-82. It is well settled principle of law, that if the tenant has been already dis-possessed rightly or wrongly and if he failed to exercise the right of possession within two years u/s 29 of the Act, his tenancy rights whatever there may be came to be extinguished. In support of above observations I may keep reliance on the precedent laid down by our Hon'ble High Court, in the case of *Ramchandra / Dhondiram, 1980 Bom.C.R.826* wherein His Lordship has ruled as under :

"Wrongfully dispossessed tenant has a right to apply to Mamlatdar for restoration of possession u/s 29(1) of the Act. If the tenant did not take any steps within the period of two years their right if any stands barred by limitation. It must be held that Plaintiff has lost his remedy and his rights as tenant also stands extinguished."

2. I have gone through the above precedent very carefully. After perusing the revenue record, it has become evident that, neither the tenant has disputed the entries in the column of cultivation which are standing in the name of land-owner since 1957-58 onwards till 1980-81, nor the LR of the deceased tenant has challenged the same at any point of time. In short, after perusing the entire proceedings, it has become evident that, the tenant has put up the claim of tenancy after 1/4/1957. However, nowhere pleaded the details of tenancy including day, date, time, place, with whom such tenancy created, manner in which it has been created, receipt of rent if any agreed between the parties or the mode therefor. In short, pleadings put forth and evidence laid to that effect are lacking. Therefore, I do find that there is no substance in entertaining the revision against the concurrent findings recorded by the tribunals below. With these observations, I proceed to pass the following order.

ORDER

The revision application moved by the applicant stands dismissed on merit at the stage of admission as per rule 13(4) made under the Code.

No order as to costs.

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