

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

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

**No.SH/I/1/2017**

Shri Balbhim Krishnaji Kadam,  
D/H—  
Smt.Vijayananda Balbhim Kadam & otrs.,  
Through POA-  
Shri.Vilas Balbhim Ligade,  
R/o.Kadlas, Tal.Sangola, Dist.Solapur. ....Applicants

**VS.**

Shri.Tanaji Sandipan Gaikwad & otrs.,  
R/o.Kadlas, Tal.Sangola, Dist.Solapur. ....Respondents

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

Appearance :- Adv. Shri S.B.Gujarathi for Revision Applicants.  
Adv. Shri J.P.Dhaytadak for Respondents

**DATE:- 25<sup>th</sup> JULY, 2018**

**JUDGMENT**

Being aggrieved by the judgment & order passed by Ld.appellate tribunal i.e. Sub-Divisional Officer, Mangalwedha Sub Dn., Mangalwedha (hereinafter referred as the "appellate tribunal") in Tenancy Appeal No.19/2015, dt.12/1/2017, the aggrieved respondents therein have 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. For the purpose of brevity and convenience parties hereinafter referred in the same sequence and chronology in which they were referred before the ALT, as the applicants or the respondents as the case may be. Facts giving rise to the present revision application can be summarized as under.

2. The land Gat No.75, adm.11 H. 19 R. situated at Village Kadlas, Tal.Sangola, was originally owned by Kadam family. The applicants have claimed tenancy rights through inheritance through their predecessor-in-title to the extent of 4H 80R as the tenant in possession since 1930-31 onwards. The applicants have moved the application dt.22/10/2012 before the Ld.trial tribunal contending that they have perfected right u/s 32G of the Act, as the statutory owner of the disputed property to the extent of 4H 80R. However, no proceedings had ever initiated by the tribunal concerned. Therefore, by moving an application dt.22/10/2012 the applicants have prayed to declare them as a statutory owner of the suit property to the extent of 4H 80R as the tenant in possession since prior to the "*tillers' day*". The said proceedings came to be registered as tenancy file No.19/2013. The Ld.trial tribunal has issued notices to the land-owner. After considering the entire revenue record available before the tribunal and submissions made before the tribunal by the respective parties in form of written arguments, the Ld.trial tribunal come to the conclusion that the disputed property being situated within the limits of Sangola Municipal Council, since prior to the "*tillers' day*", the provisions of Sec.32 to 32R are not applicable and thereby, dismissed the application for declaration of statutory ownership of the land in favour of the applicants.

3. Being aggrieved by the said judgment & order passed by the Ld.trial tribunal the aggrieved tenants have preferred tenancy appeal No.19/2015. The Ld.appellate tribunal has decided the said appeal on merit and come to the conclusion that the provisions of Bombay Tenancy Act, are applicable to the disputed land, as the applicants are tenant in possession since prior to the "*tillers' day*". Therefore, the findings recorded by Ld.trial tribunal being incorrect same has been set aside and the Ld.trial tribunal has directed to initiate the proceedings u/s 32G and to issue certificate u/s 32M of the Act, in favour of the respective applicants as per the provisions of Law.

4. Being aggrieved by the said judgment & order passed by the Ld.appellate tribunal the aggrieved landlords have preferred the present revision application on the grounds more particularly set out in revision application.

5. After the receipt of R&P from the tribunals below matter was fixed for final hearing. Heard Ld.Adv.Shri.S.B.Gujarathi for the revision petitioners / landlords and Ld.Adv.Shri.J.P.Dhaytadak for the Respondents / tenants.

6. During the course of submissions by keeping reliance on certain certificates issued by Municipal Authorities, and Village Map of village Sangola, coupled with evidentially admissions given by the tenants / applicants, Ld.Adv.Shri.Gujarathi, strongly submitted that the evidence placed on record was amply sufficient before the tribunals below to come to the conclusion that in view of amendment in the Act, and insertion of Sec.43(C) in the Act, as the land was within the limits of Municipal Council since prior to 1/4/1957 the provisions of Sec.32 to 32R are not applicable to the disputed

land. In support of his submissions Ld.advocate for the revision petitioner / landlords kept his reliance on the precedent laid down by our Hon'ble High Court, *in the case of Zoroastrian Anjuman Trust / Chimanaji Jayaram Mali, 2009 ALL MR(4) 795 : 2009 BCR (3) 50*, and prayed that the revision application may kindly be allowed and the order passed by the ALT be restored by setting aside the findings and order passed by Ld.appellate tribunal.

7. As against this the Ld.advocate for the respondent / tenants strongly submitted that there is no evidence, as to whether the disputed land comes within the limits of Municipal Council and that too more particularly the date on which the property has brought into the limits of Municipal Council. There is no *iota of evidence* so as to exclude the application of 32 to 32R to the disputed land. Therefore, the precedent relied by the advocate for the revision petitioner being not strictly applicable to the case at hand. The order passed by Ld.appellate tribunal being based on sound reasonings be confirmed.

8. After perusing the R&P received from both the tribunals below and the submissions made by respective advocates 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 it is proved that the disputed land is situated within the limits of Municipal Council Sangola, since prior to 14/1957?	Affirmative
2. If the Point No.1 is in affirmative, whether the judgment & order under revision is legal, proper & correct in the light of law points involved therein?	Negative
3. Whether the judgment & order under revision calls for interference therein through this Tribunal? If yes, upto what extent?	Yes, As per final order

### **Reasons**

9. **Point No.1,2&3:-** After perusing the record of ALT and the revenue record in support of the claim put forth by the applicant, there is no dispute about the actual, physical possession of the applicants over the disputed land through their forefathers as the tenant in possession. The revenue record specifically indicates the mode of cultivation-3 for the entire land since prior to 1/4/1957. Therefore, limited question as to, whether the land is situated within the limits of Municipal Council, and if yes, whether same is exempted

from the applications of the provisions of Sec.32 to 32R of the Act, remains for consideration. On this touchstone at first I may perused the application moved by the applicants which is at page-11 from the record of ALT, three applicants have filed the application u/s 32G of the Act, before ALT. It is well established principle of law, that the proceedings before the Mamlatdar or the Tribunal are governed by the provisions of Mamlatdars' Courts Act, 1908 and though the substantive provisions of CPC are not applicable to the proceedings before the Tribunal, as per Sec.72 of the Act, the proceedings are required to be conducted as per the procedure laid down in Mamlatdars' Courts Act, the Petition ought to have been verified by the parties concerned or if it is not so, it ought to have been verified by Mamlatdar before initiating the proceedings. Unfortunately, the Petition moved by Tanaji Gaikwad for himself and others two is not duly verified either by himself or even by Mamlatdar and as such suffers from irregularity at the face of the record.

10. The opponents Balbhim Kadam and others have submitted their written say, which is at Page-73 which is also not duly verified as required by the procedure contemplated under the Act. Now, I have no alternative other than to ignore the requirement of verification of pleadings and go for appreciation of evidence placed on record. On this touchstone it has become evident that, through say filed by the opponent, that they have raised the issue of exclusion of the disputed property from the provisions of Sec.32 to 32R of the Act, by invoking the provision of Sec.43C of the Act. Sum & substance the plea of maintainability of the proceedings on the ground that the Petition moved by the tenants for declaration u/s 32G of the Act, is not maintainable as the land is exclude from the application of 32 to 32R of the Act, is properly raised by the opponents at trial. Now, the question remains for the consideration of the Tribunal, as to what shall be the nature of objection raised by the opponent. It is well settled principle of law, that the objection raised by the opponents is a pure question of fact and not either pure question of law or mixed question of fact and law. In support of above observations I may keep reliance on the precedent laid down by our Hon'ble High Court in the case of ***Shivaji / Dilip Singh, 2002 ALL MR(3)-385***, wherein His Lordships have ruled as under:

*"Whether the land is situated in Municipal area or not? is a pure finding of fact and not else otherwise."*

11. By keeping reliance on the above precedent, herein this case I may state that once the objection is raised by the opponents for the exclusion of the land from the provisions of Sec.32 to 32R of the Act, burden shift upon the applicant / tenants to plead and prove positively, as to how the amended provisions of Sec.43C are not applicable to the disputed land. Merely by saying that CPC is not applicable will not suffice. Even otherwise as well settled though substantive provisions of CPC are not applicable, the procedural provisions of the Code are strictly applicable even before the tribunal as per Sec.141 of CPC. Burden of proof of fact lies on that person,

who wishes the Court to believe in its existence, unless it is provided by any law, that the proof of that fact shall lie on any particular person. Therefore, by keeping reliance on the plain reading of Sec.103 of Indian Evidence Act, I may state here that initial burden lies on the applicants / tenants to prove the fact that the land is not situated within the municipal limits and the amended provisions of 43C are not applicable to the case at hand. On the point of burden of proof and its extent, I may keep reliance on the following precedents.

(i) ***Jugnabai / Jamila Khanuma, 2016 ALL MR(1)-142.***

(ii) ***LIC on India / Ram Pal, 2010(4)-SCC-491***

The proposition of Law laid down in these two precedents can be summarized as under:

*"Plaintiff can succeed in proving the title by adducing sufficient evidence to discharge owners i.e. on him respective of whether the Defendant has proved his case or not? A mere destruction of the Defendants title in the absence of establish of his own title carries the Plaintiff nowhere".*

*Failure to prove the defense does not amount an admission nor does it reverse or discharge the burden of proof which initially lies upon the Plaintiff / party who is under obligation otherwise to prove the fact in his favour."*

12. By keeping reliance on the above precedents, I hold that it was for the applicant to plead and prove the fact of non-application of Sec.43C to the disputed land. Unfortunately, none of the applicants have entered in the witness box and make themselves available for the purpose of cross-examination. Not only that, but, they have not produced any documentary evidence which they could produce to dis-prove the assertion made by the opponents claiming exemption from the application of Tenancy Act.

13. Now, the admissibility of documentary evidence placed on record by the opponents has to be scrutinized in the light, whether it was sufficient for the Defendants to shift the heavy burden against the tenants to prove their assertion. On this touchstone the documentary evidence in form of certificate issued by Municipal Council and the village map is available on the record. The village map filed by the opponents alongwith the application dt.26/10/2017. This map has been produced by the opponents before this Tribunal by invoking the provisions of Order-41 Rule-27 of CPC. Certified copy of map relied as a document prepared by the State Government for the purpose of Public and the map has been not prepared for the purpose of limited cause. Therefore, same does not come within the last part of Sec.83 of the Indian Evidence Act. On the contrary as per the provisions of Sec.83 of Indian Evidence Act,1872 the Court shall presume that the maps and plans

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The written submissions referred supra are self-explanatory to observe that the tenants were and are well aware that they have to prove the location of the disputed property and non-applicability of the amended provisions of the Act, on the ground that the disputed land has been included in municipal area after 1/4/1957. However, on this touchstone by admitting the location within the limits of Municipal Council, the applicants / tenants have come with a case that they being the tenant prior to 1948, amended provisions are not applicable to the disputed land. On this point Ld.advocate for the revision petitioner / landlord has rightly placed his reliance on the precedent laid down by our Hon'ble High Court *in the case of Zoroastrian Anjuman Trust / Chimanaji Jayaram Mali, 2009 ALL MR(4) 795 : 2009 BCR (3) 50*, wherein Their Lordships have ruled as under:

*"Since the land had been within the municipal area since prior 1948, Section 32 to 32R of Bombay Tenancy Act, are not applicable and in these circumstances order passed by ALT deserves to be modified."*

16. I have gone through the above precedent very carefully and do find that the preposition of Law laid down therein certainly guides me to hold that in the present case inclusion of the disputed land within the limits of Municipal Council has been sufficiently proved by the opponents / tenants and that is since from the date of establishment of Municipal Council. Therefore, there is no necessity to have a specific date of inclusion so as to exclude the application of the amended Act. Therefore, I do not find strong substance in the submissions made by Ld.Adv.Shri.Dhaytadak, that specific date of inclusion of the disputed land is not specifically proved. On the contrary, as observed supra, the initial burden was with the applicant / tenants to prove the inclusion on the disputed land within the municipal area and i.e. after 1957, so as to claim right u/s 32G of the Act. But, within doing so they have tried to shift burden on the opponent / landlords, which is not otherwise permissible as per Sec.103 of Indian Evidence Act. In short, by way of conduct the applicant / tenants have admitted existence of the disputed land within the limits of Municipal Council and the opponents / landlord have successfully disproved the claim of the applicants u/s 32G of the Act, establishing the exemption of the land under the amended provisions of the Act. In short, the order passed by ALT being based on sound reasonings, particularly on the point of law was not required to be Ld.appellate authority and that too without considering the legal aspects involved in the matter. On the contrary, plain reading of u/s 32G of the Act,

gives an indication, that it was for the Tribunal to hold such preliminary enquiry, as to whether the land is within the limits of Municipal Council and deserve for exemption or not? It was for the parties participating to give substantial evidence. On this touchtone order passed by ALT being based on legal fiction of amended provisions of Sec.43C stands confirmed. The Ld.appellate tribunal has failed to consider all these aspects while reversing the findings of the Ld.trial tribunal, which was entirely on finding of fact based on observations made by him.

17. Now, last but not the least, point which remains for my consideration is, that the production of copy received by the opponents / landlords in respect of the decision rendered by ALT in respect of the disputed land in file No. 406/SR/6/93, dt.31/1/1994. No doubt, as observed supra, substantive provisions of CPC as regards abatement, res-judicata are not applicable to the Tribunal or Mamlatdar, under the Act. In support of above observations I may keep reliance on the precedent laid down by our Hon'ble High Court, *in the case of Keshav / Dnyanu, 1963 MhLJ-137*.

The proposition of Law laid down therein can be summarized as under:

*"The provisions of CPC do not relate only to the procedure some of them confers substantive rights such as bar of fresh suit, res-judicata, abatement etc., By following Sec.141 of the Code, provisions of Order-22 Rule-9 cannot be applied to the proceedings u/s 70 of the Act, before the tribunal. Therefore, second application is not barred by following rule of abatement."*

18. However, the provisions of Sec.115 of Indian Evidence Act, comes into play so as to estoppel (shut the mouth) of the tenants on the issue of inclusion of the property within the limits of Municipal Council since prior to 1/4/1957. The observations made by then ALT in the above referred file are self-explanatory, wherein entire S.No.75 was shown as subject matter in dispute, and reasonings recorded by the tribunal runs as under:

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19. No doubt, the present respondents are not party to the proceedings, but, still then the said finding is supported by the Public Map referred by me in Paras supra. In that context also initial burden was with the applicant to prove the certain fact, but, they failed to do so. Not only that, but, despite of ample documents though placed on record still then they continued to support the judgment & order passed by Ld.appellate tribunal, which is quite inconsistent with the facts on record. Therefore, I hold that opponent /



11,13,15landlords have successfully proved the facts, that the disputed land is situated within the limits of Municipal Council since prior to 1/4/1957, whereby in the light of amendment and insertion of provision of Sec.43C in the Act, the disputed land came to be exempted from the application of Sec.32 to 32R of the Act. Therefore, the judgment & order passed by ALT deserves to be restored and that too by setting aside the order passed by Ld.appellate tribunal. With these observations, I answer the '**Point No.1 in Affirmative, Point No.2 in Negative & Point No.3 as per final order**'.

20. Now, the last question remains for my consideration is that, despite of having knowledge about the location of the disputed land or defense set up by the landlords, the applicant / tenants have miserably failed to prove their assertions before ALT, as well as before this Tribunal. Therefore, they being the party who have dragged the opponents / petitioners up to this Tribunal, required to be saddled with the costs as per the provisions of Rule-36 made under the Act. For that purpose if the amount of costs is quantified to the extent of Rs.10,000/- that will met the ends of justice. With these observations, I proceed to pass the following order.

### **ORDER**

The revision application allowed with costs.

The judgment & order passed by the Ld.appellate tribunal in tenancy appeal No.19/2015, dt.12/1/2017 is hereby set aside.

The judgment & order passed by ALT Sangola in tenancy file No.19/2013, dt.12/5/2015 is hereby confirmed. The application moved by the applicants u/s 32G of the Act, stands rejected.

Respondents / tenants shall pay the costs of this proceedings to the tune of Rs.10,000/- to the revision petitioners within one month from the date of order. Failure to which the revision petitioners shall recover the same and through the respondents as the arrears of land revenue alongwith future interest @7% p.a. till its realization.

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

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