

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

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

No.NS/VIII/1/2017

Shri Balasaheb Arjun Budhanwar,
R/o.Shereshindewadi, Tal.Phaltan,
Dist.Satara.

.....Applicant

VS.

- 1) The State of Maharashtra
Through the Collector Satara.
- 2) Shri.Bapu Dhondiba Shinde
R/o.Shereshindewadi, Tal.Phaltan,
Dist.Satara.

....Respondents

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

Appearance :- Adv. Shri J.P.Dhaytadak for Revision Applicant
Adv. Shri Ghorpade for Respondent No.2

**DATE:- 22nd JANUARY,
2019**

JUDGMENT

Being aggrieved by the judgment & order passed by Ld.appellate tribunal i.e. Sub-Divisional Officer, Phaltan Sub Dn. Phaltan (hereinafter referred as the “appellate tribunal”) in Tenancy Appeal No.1/2016, dt.28/6/2017, the aggrieved purchaser of the disputed land moved the present revision application by invoking the provisions of Sec.76 of B.T.& A.L.Act, 1948 (hereinafter referred “the Act”), and challenged the said order on the grounds more particularly set out in the revision

application. Facts giving rise to the present revision application can be summarized as under.

2. One Shri.Dhondiba Shinde, was the original statutory purchaser of the disputed land under the provisions of sec.32G of the Act. During the lifetime of statutory purchaser, certificate u/s 32M of the Act, came to be issued in his name. The statutory purchaser of the disputed land died on 10/4/1978 living behind the present respondent No.2 as the only LR. After the death of statutory purchaser the name of the present opponent No.2 came to be certified in revenue record. Thereafter, the respondent No.2 has sold the portion of land 2H 13R to the present applicant under registered sale-deed dt10/6/1993. On the basis of said registered sale-deed M.E.No.118 came to be certified in revenue record on 23/3/1994 by keeping the remark that the said transfer found to be in contravention of the provisions of Sec.43 of the Act. Thereafter, the Ld.trial tribunal has initiated the proceedings u/s 84C of the Act, as the transfer was in contravention of Sec.43 of the Act. In the first round of litigation initially the sale was declared invalid. However, when the matter reached upto MRT Pune, the matter has been remanded for fresh enquiry so as to decide the issue of limitation by order dt.31/8/2001. After the order of remand passed by MRT, fresh enquiry initiated before the Ld.trial tribunal through file No.TC/fresh enquiry/2/2001, and came to be decided on 25/4/2016. While passing the said order the Ld.trial tribunal came to the conclusion that the disputed transaction being in contravention of Sec.43 of the Act, sale declared invalid. Being aggrieved by the said judgment & order passed by Ld.trial tribunal, the aggrieved purchaser again filed tenancy appeal No.1/2016, before SDO Phaltan, which came to be registered as tenancy appeal No.1/2016 and came to be decided by order dt.28/6/2017. While deciding the said appeal on merit the Ld.appellate tribunal has come to the conclusion that the proceedings initiated by the Ld.trial tribunal in the year 1997 found to be within limitation and therefore, do not find it necessary to interfere in the order passed by Ld.trial tribunal, and thereby, confirmed the order of Ld.trial tribunal dismissing the appeal. Being aggrieved by the said judgment & order the aggrieved purchaser has preferred the present revision application on the grounds more particularly set out in the revision application.

3. After the receipt of record from both the tribunals below, chance of hearing was given to both the parties. The respondent No.1 / State though duly served remained absent and not shown keen interest in conducting the revision before this Tribunal. Heard Ld.Adv.Shri.J.P.Dhaytadak for the revision petitioner & Ld.Adv.Shri.Ghorpade for the Respondent No.2

/ seller of the disputed land. After perusing the R&P from both the tribunals below and after considering the submissions at length by both the advocates before this Tribunal, following points arise for my determination. I have recorded my findings with reasons thereon as under :-

<u>Points</u>	<u>Findings</u>
1. Whether the judgment & order passed by Ld.appellate tribunal confirming the judgment & order passed by Ld.trial tribunal is proper, correct and legal in the eye of Law?	Negative
2. If not, whether the judgment & order under revision calls for interference therein through this Tribunal within its limited jurisdiction as per Sec.76 of the Act?	As per final order

Reasons

4. Point No.1&2: After perusing the R&P of both the tribunals below, it has become evident that, parties are not at variance as regards the source of title with the present respondent No.2 as the LR of statutory purchaser. In addition thereto, both the parties have frankly admitted the fact that the transfer effected in favour of the present applicant is not supported by valid permission accorded through competent authority constituted u/s 43 of the Act. Under these circumstances, only question of law point involved in the matter which remains for my consideration is that of limitation, so as to invoke the powers u/s 84C of the Act, by the authority constituted under the Act, either *suo-moto* or at the instant of the interested party. While considering this aspect, it has become evident that, the disputed transfer took place on 18/6/1993 and the initial proceedings of the *lis* started in the year 1997 through file No.81/97. In short, the proceedings u/s 84C of the Act, came to be initiated for the first time in the year 1997. It is pertinent to note here that, the Ld.trial tribunal while passing the judgment & order which is under challenge has not even take care to follow the strict instructions given by this Tribunal, so as to decide the pure question of Law involved in the matter. Not only that, but, even Ld.appellate tribunal has not find it necessary to consider the pure question of Law involved in the matter and that too by following the settled principles of Law laid down by our Hon'ble Supreme Court in various judgments. On this point Ld.Adv.Shri.J.P.Dhaytadak for the revision petitioner rightly called my attention towards the precedent laid

down by our Hon'ble Supreme Court, in the case of *Mohamad Kavi Vs. Fatimabai Ibrahim*, reported in 1997 (6) SCC-71, and strongly submitted that the Hon'ble Supreme Court has held that even a delay of 9 months is also not 'reasonable time' so as to initiate the proceedings u/s 84C of the Act. The proposition of law laid down in the above precedent can be summarized as under-

“The provisions of Sec.84-C itself says that the power under the aforesaid section should be exercised within a reasonable time. Where no time limit is prescribed for exercise of a power under a statute it does not mean that it can be exercised at any time; such power has to be exercised within a reasonable time”.

5. I have gone through the above precedent very carefully and do find that the proposition of Law laid down therein certainly helps me to held that, herein this case neither the Ld.appellate tribunal has take care so as to decide the pure question of Law on merit and that too by considering the proposition of Law laid down by our Hon'ble Supreme Court. After going through the facts on record and law laid down in the above precedent I do find that though the orders passed by the tribunals below are concurrent in nature same are not based on sound reasonings, particularly on the point of Law involved in the matter. Therefore, I am of the view that in view of the provisions of Sec.76(1)(a) of the Act, this Tribunal has every power to interfere in the order passed by the tribunals below and to correct the findings particularly on the Law point involved in the matter. Herein this case, inview of the above observations I do find that the concurrent findings recorded by tribunals below do not sustain in eye of Law merely on the point of limitation and deserves to be set aside.

6. Before concluding the judgment I would like to make one additional point as a part of my observations and that is inaction on the part of the State. Herein this case, once the State has passed the order u/s 84C of the Act, the property becomes a Government property and subject matter for disposition u/s 32P of the Act. However, inaction on the part of the State Authorities to conduct such revisions before this Tribunal makes it very unhealthy event. With these observations, I answer the 'Point No.1 in negative and Point No.2 as per final order' and proceed to pass the following order.

ORDER

The revision application is hereby allowed.

The judgment & orders passed by both the tribunals below are hereby set aside.