

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

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

No.119/B/2001/NS

Tukaram Savla Pawar
D/H—Shri.Yeshwant Tukaram Pawar & otrs.,
R/o.Rethare Bk., Tal.Karad, Dist.Satara.Applicants

VS.

Antu Bapu Pawar
D/H—Mahadev Antu Pawar
D/H—Shri.Vilas Mahadev Pawar & otrs.,
R/o.Masuchiwadi, Tal.Walwa, Dist.Sangli.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 N.B.Jadhav for Respondent No.1

DATED:- 13th JUNE, 2019

JUDGMENT

Being aggrieved by the judgment & order passed by Ld.appellate tribunal i.e. Sub-Divisional Officer, Karad Sub Dn.,Karad (hereinafter referred as the "appellate tribunal") in Tenancy Appeal No.56/90, dt.11/9/2001, the aggrieved Respondents therein / LR's of the deceased tenants 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. Facts giving rise to the present revision application can be summarized as under.

2. One Shri.Maruti Mane was the original owner of disputed land Gat Nos.1657 & 1820 situated at Village Rethare Bk., Tal.Karad. He died long back before 1/4/1957 living behind the widow named Tanubai & three daughters. Shri.Savlaram Pawar & Shankar Pawar were claiming right of tenancy over both the lands since prior to 1/4/1957. Fact of the land being recorded in the name of widow on the "tillers' day", and the possession over it in favor of respective tenants is not much more disputed. In continuation of those facts,

it has become evident that on 5/3/1985 the tenants have moved proceeding u/s 32G of the Act, which came to be allowed. Being aggrieved by the said order the aggrieved parties have preferred as many as six Tenancy Appeals bearing No.75/85 & 79 to 83/85. All those appeals came to be decided by way of common judgment & order dt.23/11/1987, whereby, the order passed by Ld.trial tribunal came to be set aside and matter was remanded for fresh enquiry on the grounds mentioned in the judgment. After the proceedings beings remanded the same has been re-registered as 32G/ER/124, which came to be decided on 26/3/90 by ALT. After holding due enquiry Mamlatdar /ALT has allowed the application of tenants in possession declaring them as a statutory purchaser u/s 32G of the Act of both the lands. Being aggrieved by the said judgment & order passed by ALT neither the landlords nor their LRs have invoked the remedy of appeal or revision as the case may be, but the present Respondent No.1 Antu Bapu Pawar, who claims the purchaser of the disputed land to the extent of 1/3rd share through one of the LR of the deceased landlady i.e. Housabai. The said right of appeal initiated at the instant of the purchaser. The Ld.appellate tribunal has allowed the appeal and set aside the order passed u/s 32G of the Act in favour of the tenant in possession. Being aggrieved by the said judgment & order the tenants have preferred present revision application on the grounds more particularly set out in the revision application.

3. After the receipt of record & proceedings from both the tribunals below, heard Ld.Adv.Shri.S.B.Gujarathi for the Revision Petitioners & Ld.Adv.Shri.N.B.Jadhav for the Respondent No.1 only. Respondent No.2&3 reported dead pending the revision application whose LRs are brought on record, but none of them contested the matter.

4. During the course of oral submissions Ld.Adv.Shri.S.B.Gujarathi strongly submitted that the appellant before the Ld.appellate tribunal Shri.Antu Pawar has no lucus-standi to challenge the order passed by ALT as the source of interest in the property claimed by him is not at all valid and same is in contravention of Sec.64 of the Act. On this sole ground itself the order passed by Ld.appellate tribunal does not sustain in eye of Law. In addition thereto he has strongly submitted that the right of purchase exercised by the tenant is proper and legal within the forecorners of Law set at rest as per Sec.32G of the Act. Therefore, the revision may kindly be allowed.

5. As against this Ld.advocate for the Respondent strongly submitted that, admitting the fact of tenancy rights in favour of the deceased tenant their respective LRs ought to have exercise their right of purchase in proper form as prescribed in Sec.32F of the Act. However, none of the tenants have intimated their rights to purchase the property before proper forum and time. The disputed transfer is not hit either by Sec.43 or Sec.64 of the Act. In support of his submissions Ld.advocate for the Respondents has kept reliance

on several precedents laid down by our Hon'ble High Court, as per the list filed on record on 3/4/2019.

6. After examining the record & proceedings from both the tribunals below, oral submissions made by respective Ld.advocates, 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 is proper, legal & correct?	Negative
2.	Whether the judgment & order passed by the tribunal below calls for interference therein within the limited revisional jurisdiction of this Tribunal as per Sec.76 of the Act?	Yes. As per final order

Reasons

7. Point No.1&2: After perusing the pleadings put forth, oral evidence laid before the Ld.trial tribunal, oral submissions made by both the Ld.advocates representing the parties and written arguments to that effect put forth on record, following facts emerges on record which are either admitted or not seriously disputed or otherwise proved by documentary evidence and conduct of the parties which can be summarized as under:

8. Both the lands owned by one Maruti Yesu Mane, who died long back before 1950 living behind widow Tanubai & three daughters as his LR's. M.E.No.3193 to that effect has been certified on record on 5/9/1950. One Savlaram Pawar & Shankar Pawar both were claiming tenancy rights over both the lands since prior to 1/4/1957. The entries in the column of other rights as well as column of cultivation are self-explanatory to that effect. Not only that, but certified copy of M.E.No.4326 indicates that the tenants are in possession are the ordinary tenants since prior to 1/4/1957. In continuation of above facts by way on record of the tribunal prior to the initiation of the present proceedings it has become evident that by order dt.4/5/1961 the tribunal has postponed the "*tillers' day*" by taking the note that the landlady was the widow, legally disabled within the meaning of Sec.32F of the Act. Again in the year 1979 through file No.124/Rethare Bk., by order dt.17/10/79 the Ld.trial tribunal found that on that date also landlady Tanubai was still alive the order of postponement of "*tillers' day*" shall continue during her lifetime. Even again at the instant of the LR's of the deceased tenant the matter was taken on Board and order has been passed on 31/12/1981 to the effect that the landlady being still alive the "*tillers' day*" stands postponed during her lifetime. Tanubai reported dead on 7/11/84. Thus, on the facts itself it has become evident that the tenancy rights in favour of the original

tenants and postponement of "*tillers' day*" during the lifetime of widow landlady has reached to its finality being not challenged at any point of time.

9. In continuation of above facts after perusing the further revenue record it amply suggests that during the lifetime Tanubai has moved an application to the revenue authorities and thereby, M.E.No.1485 came to be effected certifying the entry in the name of three daughters of the landlady as occupant. That entry has been certified in revenue record on 28/8/70. After the death of Tanubai, Housabai one of the daughter of Tanubai, sold her 1/3rd joint share in both the lands to the present Respondent Mahadeo Antu Pawar under two separate registered sale-deeds on 21/12/1984. As two separate sale-deeds were executed, respective M.E.No.1985 & 1986 came to be certified in revenue record so as to enter the name of the purchaser to the extent of 1/3rd share through one of the co-owner from both the lands. In continuation of above facts the dispute in respect of the right to purchase the suit land only to the extent of 1/3rd share of Housabai initiated through tenancy file No.32G/ER/124. In the first round of litigation Ld.trial tribunal has fixed the price of the land by order dt.5/3/85. The said order has been challenged by all the interested persons by filing separate appeal No.75/85 & 79 to 83/85. All these six appeals came to be decided by common judgment by order dt.23/11/87 and matter has been remanded to the trial court for fresh hearing. After remand the Ld.trial tribunal has re-instituted the proceedings as file No.32G/ER/124 and decided by order dt.26/3/90. After considering the pleadings put forth and oral evidence laid by both the parties the Ld.trial tribunal has fixed the price of the lands by order dt.26/3/90. Being aggrieved by the said order the purchaser through one of the co-owner only Antu Bapu Pawar has filed the Tenancy Appeal No.56/90 and thereby, challenged the order of the Ld.trial tribunal by inserting the other landladies as the Respondent thereto. This fact has been made it clear at this juncture only to make it clear, that the LRs of the original landlady have not challenged the order of fixation of price u/s 32G of the Act, but same has been challenged by the purchaser through one of the co-owner and the so called sale was effected on 21/12/84 while the tenancy rights of the tenants as regards the share of Housabai were not at all disputed. The Ld.appellate tribunal after hearing both the parties at length has allowed the appeal and set aside the order of trial court in respect of the fixation of price.

10. In the given set of facts, the aggrieved tenant has preferred the present revision. At the outset of the arguments the Ld.Adv.Shri.S.B.Gujarathi for the Revision Petitioner strongly submitted that the present Respondent who has challenged the order of Ld.trial tribunal fixing the price of land u/s 32G of the Act is without legal right to challenge the same. The so called appeal at the instant of the purchaser is not at all maintainable on two grounds, (i) firstly the purchaser cannot enter in the shoes of LRs of the landlady and dispute the correctness of the orders passed by Ld.trial tribunal; (ii) the transfer effected by Housabai in favour of the Mahadev Pawar being in

contravention of Sec.64 of the Act, no subsisting right remains in favour of the purchaser at whose instant remedy of appeal was invoked.

11. After scrutinizing the facts on record and after considering the undisputed facts narrated in Paras supra, it has become evident that one of the LR of the landlady i.e. Housabai has sold her 1/3rd share in favor of Mahadev Pawar through two different sale-deeds, while the tenancy rights in favor of the Revision Petitioners were subsisting and the tenants were in possession of the disputed lands. On the point the oral evidence which has come on record has to be scrutinized minutely. After doing so, I would like to refer the statement of Antu Bapu Pawar dt.12/1/90. The relevant evidentially admissions to that effect given by Antu Pawar runs as under:

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These evidentially admissions by purchaser through the landlady are self-sufficient to observe that the transfer effected in favour of the Respondent No.1 is in contravention of Sec.64 of the Act, and same is not coupled with the delivery of possession. On the contrary possession of the tenant has continued till this date.

12. After perusing the trial courts' record the present Respondent No.1 was not party before the Ld.trial tribunal and who has invoked the remedy of appeal and that too without legal right in his favour. Under these circumstances, what shall be the effect of sale in contravention of Sec.64 of the Act, has been explained by Hon'ble High Court, in the case of **Sakhubai / Chandgonda Patil, BCR-2002(5)-641**, wherein Their Lordships have ruled as under:

“There is total prohibition u/s 64 of the Act, which declares that any sale made in contravention of this Section shall be invalid. The intent of Legislature to put such as an embargo on sale of agricultural land is clearly to prevent exploitation of the agriculturist.”

13. In view of above facts and settled proposition of Law, transfer in favour of Respondent No.1 is illegal being in contravention of Sec.64 of the Act, for which no separate order from the tribunal is necessary. Not only that, but when the transfer is illegal no subsisting right remains in favour of the Respondent No.1 to treat him as an "aggrieved person" within the meaning of Sec.96 of the Code. Admittedly the word "aggrieved person" is not used either in Sec.96 of CPC or even in Sec.74 of the Act. Still then, statutory right of appeal has to be governed by the provisions of Sec.96 of CPC. Our Hon'ble High Court while interpreting the phrase "aggrieved person" and limited right vest with him to challenge the order who was not at all to consider as an "aggrieved person". In support of above observations I may keep reliance on the following precedent.

Harendra Singh / Paramjit Singh, 2014 MhLJ(2)-126(SC)

The proposition of Law laid down by our Hon'ble Supreme Court in respect of the right of appeal by the "aggrieved person" who was not party to the original proceedings can be summarized as under.

"A person aggrieved to file an appeal must be one whose right is affected by reason of the judgment to be impugned. The "person aggrieved" does not include a person who suffers from psychological or and imaginary injury, he must be one whose right or interest has been adversary effect or jeopardized if it is so established a person who is not a party to the order may file an appeal with leave of the Court to prefer an appeal. The Court has to consider the matter seriously and should give finding as to how the proposed appellant is affected before allowing him to prefer an appeal."

14. After going through the proposition of Law laid down in the above precedent quoted supra, it has become easy for me to come at a conclusion that the appeal itself preferred by the purchaser against the impugned order passed by Ld.trial tribunal was not at all maintainable, particularly when the purchaser through whom Pawar has purchased the land has not challenged the order atleast to the extent of her share. Now question will remain, what shall be the order for remaining 2/3rd share. Fortunately, in the evidence of the witnesses before the Ld.trial tribunal it has been amply come on record that the remaining two daughters have married in the family of tenant in possession. Therefore, none of them have challenged the order passed by Ld.trial tribunal. In short, landlady or their LRs have not challenged the order of Ld.trial tribunal. Therefore, appeal itself was not maintainable. The order passed by Ld.trial tribunal has reached to its finality as the LRs of landlady have not challenged the same.

15. Now, the issues raised by successful party in the appeal i.e. Respondent No.1 has to be answered in short. Herein this case, Ld.advocate

for Respondent No.1 has strongly submitted that the tenant has not exercised the right of purchase as per Sec.32F within the stipulated period i.e. within one year from the date of cause of action accrued. In support of his contentions Respondent has kept reliance on following precedents.

- (i) 2001(1) MhLJ-647
- (ii) 2006(6) AIR, BLR-233
- (iii) 2008(1) ALL MR-684
- (iv) 2016(1) AIR-BLR-518
- (v) 2009(2) ALL MR-1258

16. I have gone through the above precedents very carefully. With due respect to the Law laid down in the above precedents I may state here that the facts and circumstances of the case at hand are quite distinct than the facts and circumstances in the precedents referred supra. Therefore, the proposition of Law laid down therein cannot be strictly made applicable to the present case. On the contrary, it has become evident that since beginning the tenants were ever ready and willing to purchase the land and they have tried to do so by their conduct calling the tribunal to pass necessary order, but the tribunal has postponed the "*tillers' day*" by taking the note of liveness of the landlady. Subsequent to the date of death of the landlady it is admitted that the tenants have not issued intimation to the landladies or their LRs. However, herein this case LRs of the landlady are not challenging the order passed by Ld.trial tribunal. On the contrary, the purchaser, who cannot enter in the shoes of LR as his sale-deed is illegal. He has no right to ask for the compliance of Sec.32F of the Act, in the strict sense. If at all the LRs of the deceased landlady have ever challenged the order, facts might be distinct, but herein this case fortunate enough neither the LRs of the landlady have challenged the order nor the present Respondent No.1 can enter in the shoes of LRs of the deceased landlady as transfers effected in his favour are illegal. Any how, so far as the order passed by Ld.trial tribunal being not challenged by the competent persons aggrieved by such orders reached to its finality. Therefore, the order passed by Ld.appellate tribunal setting aside the same at the instant of the party who is lawfully entitled to challenge the same does not sustain in eye of Law. In short, by following the proposition of Law laid down in the cases referred in Paras supra I hold that the judgment & order passed by Ld.appellate tribunal does not sustain in eye of Law and deserves to be set aside, so as to maintain the order passed by Ld.trial tribunal as it is. With these observations, I answer the 'Point No.1 Negative & Point No.2 as per final order' & proceed to pass the following order.

ORDER

The revision application is hereby allowed.

The judgment & order passed by Ld.appellate tribunal is hereby set aside & the judgment & order passed by Ld.trial tribunal is hereby confirmed.

No order as to costs.

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

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