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

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

No.TNC/REV/102/2005/P

Vitthal Mhatarba Muluk,
D/H—
Smt.Anusayabai Vitthal Muluk,
D/H—
Shri.Nathuram Vitthal Muluk & otrs.,
R/o.H-6, Shriram Colony, Alandi Road,
Bhosari, Pune-411 039. .....Applicants

VS.

Smt.Indubai Bandu Muluk & otrs.,
R/o. Akharwadi, Post-Chas,
Tak.Khed, Dist.Pune. .....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 Atul Apte for Respondents

DATE:-15th FEBRUARY, 2019

JUDGMENT

Being aggrieved by the judgment & order passed by Ld.appellate tribunal i.e. Sub-Divisional Officer, Junnar Sub Dn.,Khed (hereinafter referred as the "appellate tribunal") in Tenancy Revn.No.1/2003, dt.17/12/2004, the LRs of deceased tenant have moved 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 applicant Shri.Vitthal Muluk filed an application u/s 32(1B) r/w sec.29 of the Act, for restoration of possession alleging the acts of unauthorized dis-possession of lawful tenant by the landlord. While moving an application before the Ld.trial tribunal on 27/12/1979, the applicant has specifically contended that the disputed land was in possession of his father as the tenant in possession since prior to and also on the date of *"tillers' day"* i.e. 1/4/1957. After the death of father, the applicant was in lawful possession as the tenant over the disputed land till 1979. Prior to it the applicant has got knowledge, that by taking undue advantage of fiscal and illegal entries in the column of cultivation. The landlord has transferred the disputed land to the opponent No.1 Indubai, through registered sale-deed dt.5/11/1979. By taking the help of nominal sale-deed executed by the landlord in favour of the respondent No.1, she has tried to obstruct the lawful possession of the applicant on 26/11/79 and gave threats of dis-possession. All these facts constituted for the cause of action for the applicant either to protect his possession or in the event if the dis-possession is proved, same being un-lawful and without following due process of law, prayed for restoration of possession.

3. Opponent No.1 / purchaser through the original landlord i.e. Mohanlal Kataria, contested the proceeding throughout. She has specifically contended that neither the father of the applicant, his brother Patilbuwa or the present applicants were ever in possession as lawful tenant over the disputed land prior to 1/4/1957. The opponent No.2 who was the original owner has on appointed date i.e. 15/6/1955 transferred the disputed land to the present opponent No.1 for a lawful consideration on 5/11/1979 and since then she came in actual physical possession as the owner of the disputed land. The registered sale-deed executed in her favour has been mutated in the revenue record through effective mutation entry. The applicant has never objected either the certification of entry in her favour nor he had objected the lawful possession of the present opponent No.1 at any point of time. Therefore, allegations of forcible dis-possession without following due process of law made in the application does not sustain in eye of law. On these grounds the opponent No.1 / subsequent purchaser through the land-owner prayed for dismissal of the application. The opponent No.3 is the brother of the applicant, who has entered in the witness box during the course of trial before the Ld.trial tribunal, but failed to contest the proceeding by filing effective pleadings on record.

4. Since from the date of presenting the proceedings till this date two successive rounds of litigation has already completed. In the second round of litigation, the matter was reached upto review petition before the Hon'ble High Court, against the order passed in Writ Petition No.1309/1989, dt.26/11/2002. The Review Petition No.46/2003 came to be allowed and the matter was remanded to Ld.appellate tribunal / SDO with certain directions in the review petition, so as to consider the evidentially value of seven

documents placed on record before the Hon'ble High Court, at the stage of hearing of review petition.

5. After the third round of litigation being initiated from the stage of Ld.appellate tribunal, the matter has been decided by Ld.appellate tribunal by registering the proceedings as Revn.Appln.No.1/2003 and decided the same by order dt.17/12/2004. While deciding the said matter the Ld.appellate tribunal has come to the conclusion that neither the applicant nor his father was the tenant in possession on the appointed date or on *"tillers' day".* There is no question of forcible dis-possession of the present applicant at any point of time. In short, the Ld.appellate tribunal has dismissed the application for the restoration of possession moved by the present applicant.

6. Being aggrieved by the said judgment & order passed by the Ld.appellate tribunal, the aggrieved tenant / applicant has preferred the present revision application and challenged the order passed by Ld.appellate tribunal on the grounds more particularly set out in the revision application.

7. After the receipt of record & proceedings from both the tribunals below heard Ld.Adv.Shri.J.P.Dhaytadak for the applicant and Ld.Adv.Shri.Atul Apte for the Respondent / subsequent purchaser i.e. opponent No.1 in the original proceedings. Ld.advocate for the revision petitioner strongly submitted that the Ld.appellate tribunal has failed to consider the evidentially value of documents placed on record in its true spirit. Therefore, findings recorded by the Ld.appellate tribunal being perverse, does not sustain in eye of law. On the contrary, after perusing the documents on record it has become evident that, the father of the present applicant was in possession of the disputed land as the tenant in possession on *"tillers' day"* . Therefore, the fact of forcible dis-possession after appointed date, being already proved it should be presumed that a forcible dis-possession without following due process of law has been proved and order of restoration should be granted in favour of the applicant.

8. As against this Ld.advocate for respondent No.1 strongly submitted that there is no `*iota of evidence'* to substantiate the tenancy rights in favour of the present applicant at any point of time. There was no theory of tenancy on behalf of joint family at any time. The proceedings conducted amongst the landlord on one side and the present respondent No.2 on other side has reached to its finality and the possession what was with the brother of the applicant has been taken by the landlord by following due process of law. All these facts are sufficiently proved by seven documents which were produced before the Hon'ble High Court and copies thereof which were made available for perusal of Ld.appellate tribunal. Therefore, it has been amply proved that the entire *lis* is without merit and moved ulterior motive just to establish a claim without interest. Therefore, the revision application may kindly be dismissed with substantial costs.

9. After considering entire documentary evidence made available from the record of tribunals below and copies of seven documents produced before this Tribunal at the tag end of the trial and after considering submissions made by respective advocates before this Tribunal, following points arise for my determination. I have recorded my findings with reasons thereon as under :-

	Points	**Findings**
1.	Whether the applicant / tenant has proved that he has been forcibly dis-possessed by the landlord without following due process of Law, after appointed date so as to entitle him for the restoration u/s 32(1B) of the Act?	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?	Negative
3.	What order in respect of costs?	As per final order

Reasons

10. Point No.1&2: While presenting the application u/s 32(1B) of the Act, the applicant specifically pleaded that the tenancy was created in favour of his elder brother Patilbuwa and he was cultivating the same as a member of the joint family. Record speaks something otherwise. After perusing M.E.No.5000 certified on 3/9/1948 speaks that the tenancy as a *protected tenant* certified in the name of Patilbuwa and not in the name of his father Mhatarba, as a tenancy for and on behalf of joint family. Therefore, unless sufficient evidence placed on record, no one can presume that the so called tenancy was for and on behalf of the joint family. On this touchtone, Ld.Adv.Shri.J.P.Dhaytadak for the revision petitioner called my attention towards the statement of Patilbuwa, which is on record recorded before the tribunal below dt.6/4/1991. No doubt, in his statement before the tribunal Patilbuwa has averted that the tenancy was for and on behalf of the joint family. However, the statement of the witness has to be considered as a whole and should not be pick-up here and there. Overall reading of the statement of this witness amply suggests that the present applicant was not at all cultivating the land personally and he was residing at Bombay. He had returned to the village in or about 1981. That means M.E.No.5000 was not in respect of the joint family either by succession or by specification. Therefore, applicant cannot take the benefit thereof to establish that the tenancy was for the joint family.

11. Secondly, it is pertinent to note here that, unfortunately the parties to the litigation though undergone the trial in two successive rounds, the record and proceedings atleast in form of certified copies of litigation between the parties, which took place in the year 1950 were not brought on record or brought to the notice of the tribunal till the stage of review before the Hon'ble High Court. It was for the first time certified copies of application, judgment, possession-receipt & dawandi receipt were placed before the Hon'ble High Court, for consideration and it was brought to the notice of the Hon'ble High Court, that the applicant has practiced fraud upon the tribunal and tried to obtain the orders by suppressing material facts within the knowledge of the party. In that context before referring certified copies of seven documents which were referred before the Hon'ble High Court, while entertaining the review petition, as a factual aspect I may refer the statement of opponent / Patilbuwa which was recorded before the ALT on 6/4/1981 at Page-61 from ALT file. The relevant evidentially admissions regarding his dis-possession given in cross-examination runs as under:-

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12. The statement has been recorded before the Ld.trial tribunal on 6/4/1981, admission given in cross-examination in above form takes the date of dis-possession in or about 1951. This fact of dis-possession has got certified in revenue record through M.E.No.6939 wherein it has been observed that the tenant being not in possession continuously for two years his name is deleted from column of other rights. It is pertinent to note here that, the tenant-Patilbuwa had never objected either the deletion of his name from the column of cultivation nor he has asserted possession over the disputed property either in trial as a co-applicant nor he has deposed so before the Ld.trial tribunal. On the contrary, gave certain admissions against the interest of the applicant in cross-examination. At the material stage the applicant has not chosen to have a re-examination of his own witness, particularly when he has made an admission against the interest of the party, who has examined him. In the given set of facts, the plea of applicant to be in possession of the property on appointed date does not get support of fact and Law.

13. Now I have to scrutinize the certified copies of documents placed on record. At first I may stage here that the certified copy of judgment passed by the tribunal below in the year 1951 is the certified copy of a public

document. As per Sec.74 r/w 76 of Indian Evidence Act, said copy does not require any formal proof. Other six documents though do not directly comes within the category of public document, one can could not lost the sight of the fact that all those documents came to be referred in RCS No.43/51 before the Civil Court and the existence, execution and truthfulness of these documents i.e. application, possession receipt, dawandi receipt and the intimation given by Collector Pune, in respect of the decision of Tenancy Appeal No.142/50 have been duly proved at a proper time long before 60 years as and when the certified copies have been referred in evidence before this Tribunal. In the given set of facts, I am of the view that the certified copies which have been already proved in previous civil suits and duly accepted its evidentially value will not wash out its value on the ground of denial and party cannot be asked for strict proof thereof. Herein this case, the provision of Sec.90 of Evidence Act, shall come into play to accept genuineness of all these documents.

14. By keeping in mind all these legal propositions I may state here that the certified copy of application moved by the landlord Lalchand for the possession indicates that the proceeding was initiated against Patilbuwa in his individual capacity and not as the member of the joint family. Furtheremore, after passing the order dt.12/8/1950 by Ld.trial tribunal the aggrieved tenant / Patilbuwa had preferred a Tenancy Appeal No.142/50 against the said order which came to be dismissed summarily. Other documents i.e. possession receipts and dawandi receipt speaks volume that the landlord came in possession of disputed land w.e.f. 15/3/1951, in pursuance of eviction order passed by the tribunal prior to appointed date i.e. 15/6/1955.

15. In consonance with the above observations if 7/12 extracts perused minutely, it amply suggests that since 1953-54 the name of the landlord appearing in the column of cultivation as cultivating the land personally showing Rit No.1. Since thereafter the name of either Patilbuwa or the opponent No.3 is not appearing in the column of cultivation as tenant in possession at any material time since after passing the order by the tribunal in the year 1950. In that context, mere version of the applicant that he has been dis-possessed wrongfully without following due process of law does not find the place in eye of Law or fact. Ld.Adv.Shri.J.P.Dhaytadak for the revision petitioner strongly submitted that the dis-possesion of the tenant is not duly proved by legal means, but in view of the observations made supra, it has been duly proved that the tenant whose name was recorded in revenue record as *protected tenant* on the basis of M.E.No.5000 has been evicted and the landlord was put in possession of the land. Not only that, but by executing the order of eviction which was reached to its finality. Therefore, mere assertion of earlier possession till 1979 does not lie in the mouth of the applicant. Therefore, the claim of applicant for the restoration of possession u/s 32(1B) of the Act, alleging forcible dis-possession without following due process of Law after appointed date, does not remain in force. In that

context, once the trial as well as Ld.appellate tribunal, after considering all these aspects in earlier round of litigations and even after remand by Hon'ble High Court, as per the directions given in review petition, the Ld.appellate tribunal has rightly held that the applicant has failed to prove his case for restoration of his possession on the ground of dis-possession of the tenant who was found to be in possession of tenanted land on appointed date or on 1/4/1957. On the contrary, herein this case there is no '*iota of evidence*' to record the findings that either applicant or has brother were ever in possession of the disputed land since after execution of order of eviction passed against Patilbuwa in the year 1950, which has been confirmed in 1951 before the Ld.appellate tribunal which was presented by the original respondent No.2. Under these circumstances, it has become evident that, the Ld.appellate tribunal has rightly recorded the findings after considering the Xerox copies which were made available while deciding the appeal. Not only that, but while arguing the matter before this Tribunal, certified copies of seven documents which were placed before the Hon'ble High Court, were made available as a part of record. Production has been duly allowed and after considering evidentially value of all these documents it has been amply proved that the applicant has utterly failed to make out his case for restoration within the ambit of Sec.32(1B) of the Act. Therefore, as a Revisional Court, I do not find any illegality or material irregularity committed by the Ld.appellate tribunal, while passing the order under revision. Therefore, same does not call for interference therein. Accordingly, I answer the 'Point No.1 & 2 in negative'.

16. Point No.3: Herein this case, facts are self-explanatory as to how the applicant has suppressed the material facts within his knowledge, particularly when he has examined the opponent No.3 as his witness before the Ld.trial tribunal. Opponent No.3 was the party throughout in the proceedings which was conducted u/s 29 of the Act, before the Ld.trial tribunal and which was reached to its finality for lawful execution, but also being not challenged at any point of time. Therefore, raising the plea that the applicant has been dis-possessed wrongfully without following due process of Law and that too by suppressing the existence of earlier orders passed in previous litigations which has reached to its finality amounts a fraud committed not only against the adversary party, but also upon the Court. Therefore, the applicant is not entitled even for mercy while considering the powers of this Tribunal, while imposing the costs within the ambit of Rule-36 made under the Code. In support of above observations I may keep reliance on the precedent laid down by our Hon'ble High Court, in the case of **Agarwal Industries Ltd., / Golden Oil Industries (P) Ltd., 1999(3) MhLJ-684 : AIR 1999 Bom.362 : 1999(3) Bom.CR-390.** The proposition of law laid down therein can be summarized as under :-

> "It is the duty of a party seeking equitable relief to bring to the notice of the Court all facts, material and relevant to the issue. The litigants

continued mainly to obtain the available orders from the Court, without disclosing all material facts to the Court. "Fraud" avoids all judicial acts ecclesiastical or temporal. It is the settled proposition of Law that a Judgment or a Decree obtained by pleading fraud on the Court is nullity and non-est in the eyes of Law. It can be challenged in any Court, even any co-lateral proceedings. The Courts' of Law are meant for imparting justice between the parties. One should comes to the Court, must come with clean hands. The person whose case is based on falsehood has no right to approach the Court. He can be summarily thrown out at any stage of litigation. There must be no concealment of material facts. It is not excuse for the party to say that he / she was not aware of the importance of any facts which he / she has omitted to bring forward."

17. I have gone through the above precedent very carefully and do find that, herein this case not only the dis-entitlement of applicant but non-disclosure of material facts and non-production of documents at the material time by the applicant have been duly proved which called upon the successful party herein this *lis* to fight out the litigation since last more than 30 years. As per the record the opponent No.1 who is the purchaser entered in the shoes of successor in title on the strength of sale-deed and since then she is fighting the litigation for no reason, particularly when no interest was ever in existence in favour of the applicant. Therefore, I am of the view that this is the fit case where maximum costs of Rs.25,000/- as provided in Rule shall have to be imposed against the present revision petitioner and in favour of the successful respondent No.1. With these observations, I hold that the un-successful petitioner has to be saddled with costs of Rs.25,000/- which should be given to the successful respondent No.1 only and answer the 'Point No.3 accordingly'. With these observations, I proceed to pass the following order.

ORDER

The revision application stands dismissed with costs of Rs.25,000/-.

The judgment & order passed by Ld.appellate tribunal is hereby confirmed.

The application moved by the applicant Shri.Vitthal Muluk u/s 32(1B)of the Act, stands dismissed.

The amount of costs awarded shall be paid by the petitioner to the respondent No.1 only within one month from today. Failure to which the respondent No.1 is entitled to recover the same as the arrears of land revenue alongwith future interest @ 10% 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.