

**BEFORE THE MEMBER (JUDICIAL), MAHARASHTRA REVENUE  
TRIBUNAL, MUMBAI, ON DEPUTATION TO, MAHARASHTRA  
REVENUE TRIBUNAL, PUNE**

**No.TNC/REV/122/2005/P**

1) Shri.Banya @ Baban Genu Angre ..... Applicants  
D/H---

1a) Smt.Balubai Shivaji Mazire & otrs.,

7) Shri.Shatrughna Vishnu Angre  
R/o. Angrewadi (Bhukum), Tal.Mulshi, Dist.Pune.

12) Shri.Ranjeet Buwaji Nimhan,  
R/o. Mont Vhert, Sus Road, Pashan, Pune-21.

13) M/s Accord Developers  
Through its Partner Mr.Jaspri Singh Ragbirsingh Rajpal,  
R/o. 17/290, Fortune House, Prabhat Road,  
Erandawana, Pune-4.

**VS.**

1) Shri.Narayan Maruti Falke ..... Respondents  
2) Shri.Chandrakant Shankar Falke,  
D/H---Arjun Chandrakant Falke & otrs.,  
3) Rajendra Shankar Falke  
4) Smt.Silabai Krushna Angre  
All R/o. Bhugaon, Tal.Mulshi, Dist.Pune.

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

Appearance :- Adv. Shri A.D.Mane for Revision Applicants.  
Adv. Shri V.J. Kale for Respondents  
Adv.Shri.J.P.Dhaytadak & Adv.Mahajan for Respondents--  
Subsequently transposed as Applicant No.12&13

CORAM : Shri P.B.Sawant, Member (Judicial), M.R.T.

**DATED:- 13<sup>th</sup> JANUARY, 2016**

## **JUDGMENT**

1. The LR's of Banya @ Baban Genu Angre have preferred this revision being dissatisfied with the order passed by the Sub-Divisional Officer, Mawal Sub Dn., Pune, in Tenancy Appeal No.20/2004, dt.30/3/2005. By the said order SDO Mawal set aside the order passed by the Tahsildar Mulshi, in case No.70B/SR/20/03, dt.18/11/2003 and consequentially declared the Appellant Shri.Narayan Maruti Falke as the Protected Tenant of the disputed land. Being aggrieved with the said order the family members of Angre have contended that the order is not legal nor proper, it is against the principles of natural justice law and by overlooking the facts of the case. The evidence has not been properly appreciated.

The limb of submission can be stated in nut-shell, that the land situated at Village Bhugaon spread in various survey numbers, in which Applicant Shri.Narayan Maruti Falke etc., has claimed to be a Tenant had filed an application u/s 70B of the B.T.& A.L.Act,1948 ("the Act" for short).

2. The contentions of the Applicant is that they are in possession of land since 1950-51 and therefore they have prayed that the names be entered in the revenue record as a Tenant. These contentions are refuted by the Opponents. The Tahsildar considered the rival submissions and ultimately came to the conclusion that the relations of the Landlord and Tenant has not been established and thereby, application came to be dismissed.

3. In appeal preferred by original Applicant-Falke, pointing out, they were not given sufficient time to produce the relevant record for the year 1930-40. It is also pointed out that the Tahsildar has not considered the factual possession in the land. The activities carried out by the Applicants in the land and also about the entries in the revenue record were overlooked.

4. Ld.SDO has accepted the position that the Applicants-Falke had no opportunity to adduce old record and thereby, in the absence of record they could not file proper reply to the application. The Ld.SDO has also commented upon the approach of the Tahsildar by specifically pointing out, as to why the lands were kept fallow and large of the lands were being under cultivation of the Appellant. The Ld.SDO has come to the conclusion that the Falke family were using the grass raised in the disputed land as a fodder for the cattle. Ld.SDO has concentrated on the old revenue record of 1930 onwards and also referred the provisions of law of 1939 and ultimately came to the conclusion that Shri.Maruti Chimaji Falke was the Protected Tenant in the land.

5. On these decisions and the grounds raised for the revision following points arise for my determination :-

- i) Whether the order passed by the Ld.SDO is legal & proper ?
- ii) Whether any interference is required to be made in the said order?
- iii) What is the order ?

My findings to the above points are as below for the reasons stated therein :-

- i) Yes
- ii) No
- iii) As per final order

### **Reasons**

6. Before looking into the propositions, arisen out of the Act of 1948 to subvert the propositions u/s 70B which are required to concentrate on the basis of the averments in the pleadings, which has taken the matter till 1930 and thereby, the possession of the Applicant through the said Act needs to be looked into. Section 4 of 1939 Act requires a continuous possession and cultivation in the land. The cut-off date for computing the six years period of continuous cultivation and possession is from Jan.1938, there is a option of Jan.1945 also, which lays down that either from six years preceding Jan.1945 or six years since prior to Jan.1938, there has to be a possession and cultivation in the land of the person, who considers himself as a Tenant in the land. The explanation clause indicates about the extension of period, while computing, which included the previous cultivation also. Besides the possession and cultivation in the land owned by the same Landlord, but in some other survey numbers or gat numbers can also be considered as a cultivation of Tenant for the purpose of computation of six years period as well as for the purpose of considering the said person as a Tenant. The legal position "as then was" indicates that the definition of Protected Tenant to such person can be of no avail, if the said person is found in possession as the above provision and thereafter since 19<sup>th</sup> Nov.1947, the said person shall be deemed to be a Protected Tenant, provided that prior to Nov.1947 the Landlord has not moved against the said person for a Negative declaration and if decision is in favour of the Landlord, there shall be no reason for posing such person as a Protected Tenant.

7. Inview of the above legal propositions, the question of possession shall be the prime consideration at the outset, there is no whisper on record which will disclose, that anyone of the aggrieved family could have moved before the MRT for such Negative declaration. For the reason the only question remains now is, to verify, as to whether even while, we apply the law as then was in the year 1939 can be read as been period before tribunals below as well as before this Tribunal.

8. The question of possession rather depends upon the documentary and oral evidence. It is true that the trite law specifies that mere entry in the 7/12 extract will not necessarily reveals the possession, that too a lawful possession. The prime consideration in this regard is of lawful possession and not a mere possession, apart from the fact that there has to be a cultivation. At the first instance, as per the old Act of 1939, admittedly the relevant record was not available with the Applicants and thereby, it was not produced before the Tahsildar. In my opinion, the revenue record

as maintained is always in the form of Public Record and thereby, production of such record in a subsequent proceeding or in appeal can be looked into to substantiate the considerations as adverted by the Applicants before each of the Tribunal.

9. While in appeal on 14/1/2005 Appellant appears to have produced certain record for the period in between 1930-40-41. All the record was admittedly in the form of Xerox copies, that too without certifying the said Xerox copies, those might not have been considered. While in revision the Respondents have tried to produce the 7/12 extracts of the disputed land from 1930-31 onwards. All those 7/12 extracts are certified on behalf of Tahsildar Mulshi. This Tribunal has expressed by passing the order dt.5/1/2016, that the Xerox copies cannot be relied on. Besides, it is also pointed out that such record was already produced before the Ld.SDO and the Advocate for the Petitioner has criticized the reliance placed by the Ld.SDO on such record being Xerox copies. In that process though the record indicates the name of Shri.Maruti Chimaji Falke and mode of cultivation shown as reet-III, the said entries though can be looked into for collateral purpose, but, are required to be substantiated by other relevant and cogent evidence. There is no other record to show that the Landlord has made efforts to get those entries cancelled or quashed. So far as photographs etc., the same being secondary, and for, not giving identification of land, therefore, cannot be treated as conclusive evidence.

10. The Tahsildar has taken proper care of the record which was placed before him. Though, the said revenue record indicates, the mode of cultivation and change of names in the holder's column as well as in Tenant's column. The conclusion drawn by the Tahsildar is found to be based on cogent evidence which do not require any interference. The finding in para-10 & 12 are conclusive to answer the queries raised.

11. The Opponents have denied the contentions in the application and denied about the Falke's being Tenant to Opponent No.1. Sheelabai has filed the say and specifically mentioned that since the lifetime of her father-in-law, Applicant Narayan Falke etc., are Tenants and paying the ½ of crop share. Genu Tukaram Angre died on 18/10/42 and thenafter Vishnu Genu Angre was a joint family manager, who handed over the land to Maruti Chimaji Falke for cultivation as a Tenant on the same terms and conditions. Even after the death of Maruti the land remained in possession and cultivation of Shankar & Narayan Maruti Falke as a Tenant on the same terms and conditions. She has admitted about the development in the land made by the Falke's and plantation of trees had converted the land Jirayat to Bagayat land. This particular aspect has been reproduced before the Tahsildar in the form of affidavit on a stamp-paper. It is difficult to know, as to why such statement on oath and submitted before the Mamlatdar have been refuted by the authorities below.

12. It is true that there is no document of agreement or of rent receipt. This has been rightly been dealt with by the Revision Petitioner by relying on the law laid down in a case of 2005(1) BCR-726, wherein Hon'ble His Lordship has held that

*“mere absence of written lease-deed or rent receipt cannot be the basis to answer issue against person in lawful cultivation satisfying status of deemed tenant.”*

Hon’ble Gujrat High Court in a case of *Thakor Keraji Ramji Vs. allabhadas Narottamdas*, 1996(3) GLR-849, has held that,

*“If it is found from the record that the person cultivating the land was not in unlawful possession, then he can be said to be a “deemed tenant”.”*

Same view is taken by the Hon’ble Apex Court in a case of *Dayalal Vs. Rasul Mohammad*, AIR 1964 SC-1320, wherein Hon’ble Apex Court has held that,

*“All persons other than those mentioned in clause (a),(b) & (c) of sec.4 who lawfully cultivate land belonging to other persons whether or not their authority is derived directly from the owner of the land must be deemed Tenants of the lands.”*

13. In view of the above legal position even prior to 1939 Falke family was found to be in possession of the land on the basis of the affidavit filed by Sheelabai and on the basis of supported by the entries in the 7/12 extracts. In view of this position though the entries in the record for the year 1956-57 is relied on by the Opponents, while before the Tahsildar, the question of Applicants being a Tenant has already been settled on the basis of record. There might be intervention of the names of keeping a gap on record, but it will not be necessary to discard the contentions. For this reason, while reckoning the provisions u/s 3 and 3(a) of Old Act of 1939, the requisite period of six year’s cultivation in the land appears to have been completed and it reflects about the positive sense of possession of the Revision Petitioners.

14. Coming to the Act of 1948, it is necessary to bare in mind that the declaration u/s 70B has to be in-consonance with the provisions of Sec.2(18) and sec.4 of the B.T.& A.L.Act,1948. Sec.4 at this juncture concentrate certain important aspects as below.

Admittedly, lawful possession might be indicating certain documents or strong circumstances. The circumstances are already discussed above. The lawful circumstances of relation inter-se is concerned, I have found that such relation is a history and it has happened prior to 25 years, pre the date, when the application was filed. By considering the mode of relation or coming into the relationship it will reveals that such relationship will not come into the way of the Applicants claiming the benefit as being claimed for. There is a positive assertion by one of the Landlord himself about the possession and cultivation in the land by a particular Tenant. For this reason, I do not found that the Ld.Tahsildar has mis-directed himself and had come to a wrong conclusion.

15. It is true that the question of the “cultivation of land” is concern, it is true that it, was only a grassy land. Sec.2(1) defines the terms “agricultural” and it includes

raising of crops, grass etc., While *sec.2(2A)* deals with “allied pursuits” which includes dairy farming, poultry farming, breeding of livestock, grazing, and such other pursuits as may be prescribed.

16. *Sec.2(5)* deals with the term “to cultivate” which explains as, “till or husband” the land for the purpose of raising or improving agricultural produce, or to carry on any agricultural operation thereon. By taking into considerations all these propositions, it is clear that though the land was grassy it explains the term agricultural activity. When the possession is established the question of proving a fact of having cattles or not, will definitely be of no avail. For this reason, I refer to the law laid down by Hon.Full Bench of Hon’ble Supreme Court in a case of *Sakharam Narayan Sanas Vs. Manikchand Shah*. The question before Hon’ble Their Lordships was in respect of *Sec.88* of B.T.& A.L.Act,1948 and its applicability with prospective effect. Hon’ble Their Lordships have also referred to the *sec.3* of Act of 1939 and considered Protected Tenancy of a person holding the land continuously for a period not less than six years immediately preceding the dates mentioned in the foregoing paras. The Hon’ble Apex Court also referred to ‘personal cultivation’ in the land and thereby, after establishing the fact the said person is entitled to a status of Protected Tenant, as a result of operation of the Act as mandated by the Bombay Tenancy (Amend.) Act of 1946 and u/r 3A(1) the said person held to be a *deemed tenant* under the Act and their rights as such were recorded in the Record of Rights. Hon’ble Their Lordships have also referred furthermore that the Act of 1948 by *sec.2(14)* prior to its amendment by Bombay Act o 1956 provides that Protected Tenant means a person who is recognized to be a Protected Tenant u/s 4A , which lays down that,

*“For the purposes of this Act, a person shall be recognized to be a Protected Tenant, if such person has been deemed to be a Protected Tenant u/s 3, 3A or 4 of the Bombay Tenancy & Agricultural Lands Act, 1939.”*

17. It is clear that the Ld.SDO has considered the entire fact with its pros & cons and ultimately had come to the conclusion by speaking out the fallacy in the order of the Tahsildar and thereby, rightly declared the original Applicants to be a Protected Tenants.

18. For the purpose of consideration u/s 4 of the Act, 1948 is concerned, I have relied on the law in a case of *Dayalala (supra)*. The reason behind it, that the record and the evidence before the Tahsildar was rightly available for considering the Applicant as a Tenant within the meaning of *Sec.4*. In the recent case of *Jagannath Vithu Jadhav Vs. State, 2013(2) Mhlj-44, Hon’ble His Lordship has held that,*

*“It is necessary to have entry in the tenancy column or rent note or rent receipt to support the claim of statutory tenancy i.e. lawful cultivation by person other than member of the family of the Landlord, subject to the other conditions laid down in sec.4.”*

There are catena of judgments, wherein there is a consistent view for considering a person as *Deemed Tenant*, if the lawful cultivation and possession in the land is established. Herein this case the Landlord is expressed indicative fact, besides the entries in the revenue record, which substantiates the contentions to attribute a status of Landlord as a Tenant. For this reason, I have refer the law laid down by Hon'ble Apex Court in a case of *Sadashiv Patil Vs. Purushottam Patil, 2007(1)*, which lays down that,

*“Provisions of Bombay Tenancy Act and Revenue Patels (Abolition of Office) Act are required to be construed harmoniously. They have to be construed keeping in view of the purport and object, they seek to achieve. Sec.32 of the Bombay Tenancy Act confers an absolute right to the tenant. As in 1957 the right of the respondent to purchase the land became a vested right, proviso appended to sec.8 of the 1962 Act could not be read to mean that such right stood divested. Proviso appended to sec.8 refers to the application of the provisions of the relevant tenancy laws as the same does not abrogate a vested right. Proviso, it is well-known, has a limited role to play.”*

Herein this case the person in possession of the land had gone before the appropriate Forum for getting his right declared. The cultivation in the land has been established the permission to cultivation is admittedly from the Landlord's family.

19. In the above situation, I have found nothing error in the order passed by the Ld.SDO, there is no mis-reading of fact or mis-application of law. Such order requires to be maintained. The revision is therefore, devoid of any substance. It is necessary to mention at this juncture that the remarks made by me as above, that the land has already been sold, the land is under development agreement. The new purchasers have purchased the land with all encumbrances and with knowledge they must have taken search of the property and they must have knowledge of the presence, existence, about development carried out in the land. Therefore, by knowing it fullwell, if the land is purchased with open eyes, then it is now difficult to accept the propositions, that the present Opponent i.e. Falke has no concern with the land. In the result, revision must fail. Hence, I have given my findings to the point accordingly & pass the following order.

### **ORDER**

The revision is hereby dismissed.

The order passed by the Sub-Divisional Officer, Mawal Sub Dn., Pune, in Tenancy Appeal No.20/2004, dt.30/3/2005 is hereby confirmed.