

BEFORE THE MEMBER, MAHARASHTRA REVENUE TRIBUNAL,
PUNE BEHCH, PUNE

No.TNC/REV/26/2002/P

Kisan Ranguji Pathare (Deceased through L.H.)

.....Applicants

- 1) Vasantrao Kisan Pathare (POA),
- 2) Suresh Kisan Pathare,
- 3) Smt.Pushpabai Kisan Pathare,
- 4) Sou.Seema Suresh Bhandar, R/a Vadhubudruk, Tal.Shirur, Dist.Pune
- 5) Smt.Laxmibai Rambhau Pathare,
- 6) Sandip Rambhau Pathare,
- 7) Dilip Rambhau Pathare,
- 8) Prashant Rambhau Pathare,
- 9) Smt.Bababai Narayan Pathare,
- 10) Somnath Narayan Pathare,
- 11) Machhindra Kondiba Pathare,
- 12) Dhananjay Kondiba Pathare,
- 13) Manohar Kondiba Pathare,
- 14) Smt.Sanjivani Machhindra Pathare,
- 15) Smt.Lanka Dhananjay Pathare,
- 16) Smt.Shobha Mahadev Pathare,
- 17) Smt.Smita Bapu Pathare,
- 18) Smt.Anita Shivaji Nangude,
- 19) Smt.Vandana Raju Warghade,
- 20) Smt.Sujata Narayan Hargude
- 21) Kerba Ranguji Pathare

No.1 to 3 & 5 to 21 R/o Kharadi, Tal. Haveli, Dist.Pune

V/s

- 1) Parashar Co-op Housing Society Ltd.
A Co-Operative Society registered under the
Maharashtra Co-Operative Societies Act.1960
Represented by the Chief Promoter
Shri.Savleram Pandarinath Thube
R/a No.6, Bhat Bunglow, Shivajinagar, Pune 411 005
- 2) Smt.Maltibai Madhav Omkar,
- 3) Sou.Madhuri Mohanrao Dharmadhikari,
- 4) Mohanjirao Madhav Omkar,
- 5) Shrikant Nilkanth Omkar,
- 6) Smt.Prabhawati Nilkanth Omkar,
- 7) Balchandra Anant Omkar,
- 8) Kum.Mrunalini Anant Omkar,
- 9) Sou.Sunetra Digambar Sahastrabudhe,

Case मधील महत्वाचे मुद्दे:-

- ① कु.का.क. 5 मधील व्याख्येप्रमाणे कुनस त्याची स्वतःची जमीन व tenanted property मिळून 48 Acre या वर land मिळू शकत नाही.
- ② Principle of Res-judicata कसा apply होतो.
- ③ excess land ही land owner ला त्रयस्थ इसमामे विकता येणार नाही. तिथे कु.का.क. 32 E/6 क. 5 मधील disposal मंत्र/mamaldar यांनी दिलेले अपेक्षित आहे. न केव्हास व अशी पिढी झाल्यास 89C या प्रपॉजिशन (शेअरिंग - forphature) लागू होत नाही.
- ④ कुनसच्या Dwelling house वाकत क. 16, 17 यांनी ALA ने निर्धारित घेणे आवश्यक होते.

32 E : If the tenanted property is an excess land it should be considered as if it is land surrendered by.....Opponents that tenant under section 15 of TNC Act & its disposal should be made accordingly by the Mamaldar.

- 10) Sou.Varsha Vasant Bendre,
11) Sudhir Vinayak Omkar,
12) Sou.Pushpa Chitale,
No.2 to 12 R/a 425(Old) 1471 (New) Sadashiv Peth, Pune 411 030
13) Chintaman Baburao Omkar, R/a 162, Shaniwar Peth, Pune 411 030.

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

Appearance :- Adv. Shri Prakash Kamthe / P.V.Belhe for Revision Applicant
No.1 to 16
Adv. Shri.Phatak for Applicant No.21
Adv.Shri.C.V.Wakankar for Opponent No.1
Adv.Shri.D.V.Nanekar for Opponent No.4 to 13

CORAM : Shri M.M.Adtani, Member, M.R.T., Pune Bench, Pune.

DATED:- 16TH MAY, 2016

JUDGMENT

1. This is the revision application filed by the Applicants on being aggrieved by the order dt.1/10/2002 passed by the Sub-Divisional Officer, Pune Sub Dn.,Pune (SDO) in Tenancy Appeal No.46/2001. Vide the said impugned order the SDO has allowed the appeal filed by the present Revision Opponent No.1 and has set aside the order dt.26/11/2001 passed by the Addl.Tahsildar & ALT, Haveli (ALT) in case No.32-O/SR/32/2001. The ALT vide his said order of 26/11/2001 has fixed the purchase price of the area 1H.25R. of S.No.52/2B of Mouze Kharadi u/s 32G of the B.T.& A.L.Act,1948 (the Tenancy Act) in favour of the original Revision Applicant Kisan Ranguji Pathare.

2. I have heard Ld.Adv.G.K.Pathak for the Applicant and Ld.Adv.C.V.Wakankar for Opponent No.1.

3. Ld.Adv.Pathak for the Applicant submits that originally two brothers namely Ananda Bhau Pathare and Rangu Bhau Pathare were jointly tenants on the suit land S.No.52/2B of Mouze Kharadi besides other lands belonging to Omkars that are the present Revision Opponent No.2 to 13. Each of the two brothers had $\frac{1}{2}$ share in tenancy rights on the lands under tenancy. The ALT had suo-moto started proceedings u/s 32G of the Tenancy Act vide case No.32/1965 to determine the purchase price of the tenanted lands. The ALT vide its order dt.18/6/1965 held that the total holding (their own lands and the tenanted lands) of each of the two brothers was exceeding the ceiling area of 48 acres prescribed under the Tenancy Act and thereby allowed purchase of the land under tenancy limited to the ceiling area so that the total holding of each of the brother separately does not exceed the prescribed ceiling area. This order dt.18/6/1965 of the ALT was challenged by Ananda Bhau Pathare in appeal No.248/72 before the SDO. The SDO however dismissed the said appeal by his order dt.29/1/1973. On being aggrieved by this order of the SDO, Ananda Bhau Pathare filed the revision application before this Tribunal vide No.19/73. This Tribunal vide its order dt.21/9/74 allowed the revision application and set aside both the orders of Ld.Lower Court, viz. SDO's order dt.29/1/1973 and ALT's order dt.18/6/1965 and remanded the case back to the Ld.Lower Court for allowing the Revision Applicant to exercise its choice u/s 33C of the Tenancy Act (should be actually sec.32C of the Tenancy Act). He further submits that Ananda Bhau Pathare in Tenancy Appeal No.248/72 as well as in revision application No.19/73 had not made LR's of Rangu Bhau Pathare that are Kondiba & the present Revision Applicant Kisan and the other LR's of Rangu as party in these cases. The MRT's order dt.21/9/74 has set aside both the orders of

the Ld.Lower Court totally. It does not say that the Ld.Lower Courts order are set aside or modified to the extent of share of Ananda Bhau Pathare only. Therefore after remand the ALT should have given fresh look in the matter in respect of share of Ananda as well as of Rangu. Rangu Bhau Pathare had expired in 1948 itself and his son Kondiba has died on 13/9/1970. Therefore the present Revision Applicant who is Kondiba's brother and other LR's of Kondiba have become tenants on the suit land.

4. Ld.Adv.Phatak further submits that the present Revision Applicant as joint family manager applied to the ALT for fixing purchase price of S.No.52/2B of Kharadi (area 2H.49R.) for which he was the tenant through his father Rangu Bhau Pathare. The ALT rightly allowed this application to the extent of $\frac{1}{2}$ share i.e. 1H. 24.5 R. in favour of the present Revision Applicant. However the present Opponent No.1 who is the subsequent illegal purchaser of the suit land from the original landowners (Opponent No.2 to 13) filed appeal before the SDO who has allowed his appeal vide impugned order dt.1/10/2002 on the ground that the matter has already become res-judicata in view of order dt.18/6/65 passed by the ALT in case No.32/65. He further submits that the principle of res-judicata will not apply in the case because the ALT's said order in case No.32/65 has already been set aside by this Tribunal vide order dt.21/3/74.

5. Ld.Adv.Phatak further submits that even presuming that the present Applicant had total area more than the ceiling area and the present Revision Applicant does not become entitled to purchase the suit land then excess land under tenancy is to be suitably disposed by the Tahsildar under the provisions of

sec.32E read with Sec.15 of the Tenancy Act. In any case, the owners could not sale the said land to Opponent No.1, a non-agriculturist Housing Society. Therefore this entails enquiry u/s 84C of the Act too. The Opponent No.1 Society has no locus-standi in the case. Further no decision has been given by the Tahsildar u/s 16 & 17 of the Tenancy Act because the present Applicant has his dwelling house on the suit land since decades. Therefore he prays to set aside the SDO's impugned order or remand the case to the Ld.Lower Court for further enquiry u/s 84C of the Tenancy Act as there has been violation of the provisions of the Tenancy Act, and for decision u/s 16 & 17 of the Act as regards applicants' dwelling house.

6. Ld.Adv.Wakankar for the Opponent No.1 submits that we have to go through the order dt.18/6/65 of the ALT in case No.32/65 carefully. This order very clearly deals separately with reference to total holding of Ananda Bhau Pathare & that of Kondiba Rangu Pathare. The holding of each of the two tenants has been discussed separately and finally there are separate decisions as regards each of the two tenants. There are total three lands bearing S.No.43/3 (area 9.18 A, 1.37 PK), S.No.52/2B (area 4.34A, 1.12 PK), S.No.53/1 (area 3.0A, 0.2 PK) belonging to Omkar family discussed in the case in which Kondiba Rangu Pathare & Ananda Bhau Pathare had $\frac{1}{2}$ share each as tenants. But as the total holding of Ananda Bhau Pathare is calculated to be 81A & 16 $\frac{1}{2}$ G (18A 5G land as owner and 63A & 11.5G total land as tenant including tenant on other owners' lands) and it being more than the prescribed ceiling area of 48A, he is not allowed to purchase any area from the suit land. However in respect of Kondiba Rangu Pathare (whose present Revision Applicant is the brother and heir of the family of original

tenant Rangu Pathare), his total holding excluding tenancy on 8 acre 26 Gunthas on Omkar family's lands is calculated at 42 acres and 19.5 Gunthas and he is allowed to purchase 5 acre and 28.5 Gunthas rounded to 5 A 29 G from the tenanted land of Omkar family i.e. upto the limit of the ceiling area. Thus this order is very specific in respect of each of the two tenants. Against this order only Ananda filed appeal before the SDO and then revision before this Tribunal only in respect of his lands. In both these cases Ananda has pleaded only his points and has not sought any relief from Kondiba, the other tenant. Therefore there was no reason for him to make Kondiba or present Revision Applicant as party*in the case. The pleading in the revision before the MRT was about his holding and to allow him to exercise his choice u/s 32C as to which of the tenanted land he should keep with himself and surrender the rest. Therefore setting aside of the ALT's order of case No.32/65 shall apply only with reference to Ananda not with reference to the Kondiba. As Kondiba has not filed any appeal against the order dt.18/6/65 in case No.32/65 the matter has become res-judicata as far as share of Kondiba and proceedings u/s 32G of the Tenancy Act are concerned with respect to his share. Further in the application filed by him before the ALT vide case No.32/2001 for fixing the purchase price of 1/2 share of S.No.52/2B, he has not disclosed proceedings in case No.32/65 by which he was allowed to purchase 4A. 29G from S.No.43/3 and 1.0 A from S.No.53/1 total 5.29 A from the Omkar family's lands and the purchase price for the same was already fixed u/s 32G and vide this order he was directed to leave his share from S.No.52/2B (present suit land). Therefore the order passed by the ALT in case No.32/2001 is totally illegal and therefore has

been rightly set aside by the SDO vide his impugned order dt.1/10/2002. He has given the following citations in support of his say.

- 1) AIR 1987 Kerla 94
- 2) AIR 1993 Delhi 51
- 3) AIR 1993 Rajasthan 51
- 4) AIR 1987 SC 1304
- 5) AIR 1982 Allhabad 323
- 6) AIR 1965 SC 1874
- 7) AIR 1982 Patna 28

In reply Adv.Pathak for the Applicant submits that the present Revision Applicant was not aware of No.32/65 proceedings. He came to know only when SDO mentioned it in his impugned order. He further submits that if MRT found some illegality in respect of the Anandas' share, why the MRT could not take cognizance of present Applicants share also.

2/16/5/16
7. After considering the arguments of both the Ld.Counsels and on going through the case papers I notice that there is no dispute as to originally two real brothers namely Rangu & Ananda s/o Bhau Pathare had $\frac{1}{2}$ share each as tenants on the lands bearing S.No.43/3, 52/2B and 53/1 of Kharadi belonging to forefathers of present Opponent No.2 to 13. Rangu had died in 1948 and his son Kondiba as joint family manager was recognized as tenant in place of Rangu. ALT had suo-moto started proceedings u/s 32G of the Tenancy Act vide case No.ALT/Kharadi/32/65. In the said proceedings the ALT has clearly and separately discussed total holding of Kondiba Rangu Pathare and that of Ananda Bhau Pathare. In the said order he has separately established that Ananda's total holding as owner and as tenants on different lands of different owners being 81A & 16.5 G. i.e. more than the prescribed ceiling area of 48A, he is not entitled to purchase any

land from the said survey numbers. However as regards total holding of Kondiba excluding his share on these survey numbers being 42A and 19.5G, he is allowed to purchase 5 A and 28.5 G to make it up to ceiling area 48 A. He has further said this 5 A 28.5 G (rounded to 29 G) be purchased as follows : 4A 29G from S.No.43/3 & 1A from S.No.53/1 and no land from S.No.52/2B. Kondiba (brother of present Revision Applicant) was alive till 13/9/1970. He during his lifetime or the present Applicant after his death have never challenged this order in appeal. Only Ananda Bhau Pathare had challenged this order in appeal and in revision on the point of his total holding and on the point of getting choice u/s 32C of the Tenancy Act as to which of the land under tenancy he may retain and which he may surrender. This Tribunal in revision while setting aside the ALTs' order has given him (Ananda) the choice which he may exercise under the provisions of sec.32C. Ananda's pleadings in all these cases was actually only with regard to his share and he was seeking relief against the State which was granted to him only in terms of sec.32C of the Tenancy Act. As the ALT's order in proceedings in case No.32/65 was distinctly separate in case of Kondiba Rangu Pathare and as he has not sought any relief against the said order in any appeal or in any revision proceedings, the ALT's order in case No.32/65 has become final as regards his share and the matter has definitely become res-judicata against him. The citations presented by the Adv.of Opponent No.2 especially AIR 87 Kerla-94 well establishes this point. The present Applicant who was not allowed any share from S.No.52/2B vide order dt.18/6/65 in case No.32/65, therefore could not file any application before the Tahsildar & ALT in 2001 to get the purchase price fixed for the said survey number. While filing this application he has not made any reference to proceedings of

32/65. He cannot take stand that this order was not known to him, especially when his brother Kondiba Rangu Pathare was very much present in the said proceedings and he has not challenged the said order in any appeal during his lifetime i.e. till 1970 and further that Kondiba Rangu Pathare was holding the land as joint family manager only is clear from the M.E.No.926, dt..5/11/70 vide which after the death of Kondiba the name of present Applicant who is his brother is also recorded in the holdings of Kondiba. In view of above ALT's order dt.26/11/2001 fixing the purchase price of S.No.52/2B in favour of the present Revision Applicant is illegal and improper. Therefore it has been rightly set aside by the SDO vide his impugned order dt.1/10/2002. Therefore to this extent the present revision application of the Applicant cannot be allowed.

8. However as regards other points of the present Revision Applicant that if the total holding of the Applicant and that of Ananda had exceeded the ceiling area, the balance excess land under tenancy could have been dealt with by the Tahsildar under the provision of Tenancy Act and that the land owner could not sale it to the Opponent No.1; these have some force and these points need to be examined by the Ld.Lower Court. As per Sec.32E of the Tenancy Act r/w Sec.32A, 32B & 32C, the balance of any land after the purchase by the tenants u/s 32 is to be disposed of in the manner laid down in Sec.15 as it was the land surrendered by the tenants. Further as per Sec.15(2) of Tenancy Act, the Landlord shall be entitled to retain the land so surrendered for the like purpose, and to like extent, and in so far as the conditions are applicable subject to the like conditions as are provided in sections 31 & 31A for the termination of tenancies. Therefore in view of these provisions, the Lower Court to examine whether the sale of the suit land by the

landowners to Opponent No.1 is valid and legal or not. Further it is the contention of the Applicant that he has dwelling house on the suit land therefore there has to be specific decision of the Tahsildar u/s 16 & 17 of the Tenancy Act, which has not been given so far. Therefore on these points the case needs to be remanded to the SDO for further enquiry as regards suit land. In view of above I pass the following order.

ORDER

1. The order of Addl.Tahsildar & ALT Haveli in T.C.No.32-O/SR/32/2001, dt.26/11/2001 as regards fixing of purchase price of suit land in S.No.52/2B is hereby set aside and to that extent the SDO's impugned order dt.1/10/2002 in Tenancy Appeal No.46/2001 is maintained.
2. The case is remanded to the SDO to get the matter enquired on points as mentioned in last para No.8 of the judgment and take further action, if required, as per law.