IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6168 OF 1998
WITH
CIVIL APPLICATION NO. 1481 OF 2007

1. Baban Rambhau Tikande
2. Narayan Laxman Tikande
   Both Residents of Kendur,
   Taluka Shirur, District Pune. ... **Petitioners**

V/s.

Shri Vithal Mandir Swakul Sali
Samaj Public Trust,
Represented by Ramchandra Balaji
Palekar, Resident of Nav Sahyadri
Society, Survey No.43, Plot No.83,
Pune – 411 052. ... **Respondent**

Mr.P.B. Shah a/w. Ms.Gunjan Shah for Petitioners.
Mr.B.R. Mandlik i/b. Mr.S.S. Patwardhan for Respondent.

CORAM : A.S. GADKARI, J.

DATE : 6th August 2019.

ORAL JUDGMENT :-

1] The present petition under Article 227 of the Constitution of India takes exception to the Judgment and Order dated 6th July 1998 passed by the learned Member, Maharashtra Revenue Tribunal, Pune-1 in Case No.MRT/P.VIII-7/95 (B-136/95) Pune, allowing the said Revision and setting aside concurrent findings recorded by both the lower authorities fixing the price of the suit land under Section 32G of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short, "MTAL Act").

2] Heard Mr.Shah, learned counsel for the petitioners and Mr.Mandlik, learned counsel for the respondent. Perused the record.

3] The record reveals that, the land in-question is lying and situated at Village Kendur, Taluka Shirur, District Pune bearing Gat No.1918 admeasuring 1 Hectare 51 Ares. The said land was originally owned by the Vithoba Dev (Devasthan) of Sali Community. The predecessor-in-title of the petitioners, namely, Shripati Ganpati Tikande was a protected tenant in the said land, as he was in physical possession and cultivating the said land. The revenue record maintained by the Authority indicates that, since the year 1929-1930 Shripati G. Tikande was in actual possession and cultivating the suit land. That Shripati G. Tikande was taking various crops from the said land. Mutation Entry No.7687 was effected by the Revenue Authorities, wherein the name of

Shripati G. Tikande was entered into the column of other rights as 'protected tenant', as contemplated under Section 3-A of the Bombay Tenancy and Agricultural Lands Act, 1939. Shripati G. Tikande expired in the year 1963 without any issue. Shripati G. Tikande had two brothers, namely, Rambhau and Laxman. A Mutation Entry No.10852 was effected by the Revenue Authorities in the year 1965, incorporating the names of Laxman Ganpati Tikande and son of Rambhau, namely, Baban Rambhau Tikande as legal heirs of Shripati Ganpati Tikande. Laxman Ganpati Tikande was treated as the Manager of the Joint Family. The record indicates that, the said Mutation Entry No.10852 was certified in the year 1965 itself. The petitioner No.2 Narayan is the son of Laxman G. Tikande.

The record further reveals that, on 17/07/1991 the respondent-Trust was registered as contemplated under Section 20 of the Maharashtra Public Trusts Act, 1950. That on 17/09/1991 the petitioners herein i.e. legal heirs of Shripati G. Tikande filed Application No. 5 of 1991 under Section 32G of MTAL Act before the Tahsildar and Agricultural Lands Tribunal (ALT), Shirur, District Pune for fixing price of the suit land. The respondents herein contended that the suit land is

'Inam Class-3 land' belonging to a religious trust and therefore the provisions of Section 32G and other related provisions of MTAL Act are not applicable to the petitioners herein. The ALT Shirur after hearing the parties to the said application and after perusing the evidence available on record fixed price of the suit land under Section 32G of the MTAL Act by its Order dated 28/06/1993.

The respondents feeling aggrieved by the said Order dated 28/06/1993 preferred Appeal under Section 74 of MTAL Act bearing Tenancy Appeal No.31 of 1993 before the Sub-Divisional Officer, Shirur Sub-Division, Pune. The Sub-Divisional Officer, Shirur Sub-Division, Pune after re-appreciating the entire evidence available on record has dismissed the said appeal by its Judgment and Order dated 18/07/1995.

The respondent thereafter preferred Revision under Section 76 of MTAL Act before the Maharashtra Revenue Tribunal, Pune-1 (for short, “Revenue Tribunal”) bearing Case No. MRT/P.VIII-7/95 (B-136/95) on 07/08/1995. The Revenue Tribunal by its impugned Judgment and Order dated 06/07/1998 has allowed the said Revision, thereby setting aside concurrent findings recorded by both the Revenue Authorities below.

A perusal of impugned Order passed by the Revenue Tribunal would indicate that, it has taken into consideration the provisions of Section 88B(1)(b) of MTAL Act holding that, the suit land belongs to a religious trust i.e. respondent herein and therefore, the provisions of Section 32 of MTAL Act will not be applicable to the suit land.

The afore-stated chronology of events are admitted facts on record.

4] Mr.Mandlik, learned counsel appearing for the respondent vehemently opposed the petition. He submitted that the petitioners preferred application under Section 32G of MTAL Act on 17/09/1991 i.e. after a laps of about more than 25 years from the date of death of Shripati G. Tikande in the year 1963. He submitted that, on the date of filing of the application by the petitioners i.e. on 17/09/1991 under Section 32G of MTAL Act, the Respondent-Trust was already registered on 17/07/1991 and therefore, the provisions of Section 88B(1)(b) of MTAL Act has application to the present proceedings. He submitted that, the application preferred by the petitioners under Section 32G was not within the reasonable period and therefore is barred by limitation. He however fairly conceded to the fact that, the decision of Full Bench of this Court in the case of *Panpoi Dharmal Sansthan Dhotarkherda Vs. Bhagwant s/o. Maroti Dhakulkar & Others, reported in [1989 Mh.L.J. 710]* taking the said view has been set-aside by the Hon'ble Supreme Court in the case of *Panpoi Dharmal Sansthan Dhotarkherda Vs. Bhagwant & Others, reported in (2000) 9 SCC 307*. He submitted that, the adjudication of tenancy of the petitioners under Section 40 or under Section 70(B) of MTAL Act was not undertaken by the concerned authority, i.e. ALT, either on an application filed by the petitioners or suo-moto and therefore for want of declaration of the petitioners as tenants, their claim for fixing price of suit land under Section 32G cannot be entertained. He further submitted that, the Revenue Tribunal after considering the necessary and relevant provisions of law has rightly passed the impugned Order dated 06/07/1998 and therefore, interference by this Court in it is not necessary. He therefore prayed that, the present petition may be dismissed.

5] As noted earlier, the record clearly indicates that, it is an admitted fact on record that, Shripati G. Tikande was a tenant in the suit land, which was originally belonging to the Vithoba Dev

(Devasthan) of Sali Community. Shripati G. Tikande was declared as a protected tenant under Section 3-A of the BTAL Act, 1939 and a Mutation Entry No.7687 has been effected in that behalf in the year 1950. Till his death in the year 1963, admittedly, Shripati G. Tikande was in possession and cultivating the suit land as a 'tenant', as contemplated under Section 2(18) of the MTAL Act. Section 4A of the MTAL Act defines 'Protected Tenant' and it states that, for the purpose of this Act a person shall be recognized to be a protected tenant, if such person who is deemed to be a protected tenant under Section 3, 3A and 4 of the BTAL Act, 1939. Admittedly, Shripati G. Tikande was a protected tenant in the suit land as noted earlier. The respondent-Trust was registered on 17/07/1991. It is to be noted hear that, though the respondent is disputing the fact that, Shripati G. Tikande was never in possession of the suit land and are contending that, the petitioners ought to have proved their claim i.e. tenancy in suit land by adopting proceedings under Section 70B or 40 of MTAL Act, the respondent since 1965 till 28/06/1993 i.e. date of filing of the application by the petitioners under Section 32G never took any pains to question the Mutation Entry No.10852, recording names of the petitioners as legal heirs of protected tenant herein. The respondent is therefore estopped from raising such an issue belatedly after a lapse of 25 years.

6] The learned Single Judge of this Court in the case of *Sri Laxminarayan Temple Vs. Laxman Mahadu Chandore, reported in [1969 Mh.L.J. 476]*, while analysing the provision of Section 88-B(1)(b) of the B.T.A.L. Act in para 5 has held as under :

> *"..........Clause (b) grants exemption to the properties of certain types of trusts and the proviso lays down two conditions for the acquisition of the exemption, the conditions being firstly, that the trust must be or must be deemed to be registered under the Bombay Public Trusts Act and secondly, that the entire income of the property is appropriated for the purposes of the trust. A trust is not entitled to the exemption till it fulfills the two requirements mentioned in the proviso. It must follow that the trust in the present case was not entitled to exemption under Section 88B till 28th March 1958 when it was registered under the Bombay Public Trusts Act. Before that date, however, respondent No.1 had already become the owner of the land by virtue of the provisions contained in Sections 32 to 32R of the Act. The petitioners cannot get exemption in respect of a land which had ceased to be the property of the trust on the date on which the trust*

became entitled to claim that exemption."

7] The Division Bench of this Court in the case of *Chhatrapati Ccharitable Devasthan Trust Vs. Parisa Appa Bhoske & Others, reported in [1979 Mh.L.J. 1633]*, by relying on the decision in the case of Sri Laxminarayan Temple (supra), while analyzing the provisions of Section 88B of MTAL Act and 32 of the Bombay Trusts Act (Maharashtra Trusts Act) has held that, a trust is not entitled to the exemption till it fulfills the two requirements mentioned in the proviso of Section 88B of MTAL Act. It is further held that, a trust may be created after Section 88B came into effect and still the land owner would be entitled to exemption, even by that section. A trust however cannot claim an exemption under that section in respect of land which had already become property of the tenant before the right of exemption was acquired by the trust.

8] As noted above and at the cost of repetition, it is to be mentioned here that, Shripati G. Tikande was declared to be a protected tenant in the year 1950 and continued to be a protected tenant after the incorporation of Section 4A in the MTAL Act, which was inserted by way of Amendment Act 13 of 1956. The petitioners being successors in title of Shripati G. Tikande, their names have been entered into revenue records in the year 1965 by effecting Mutation Entry No. 10852. In view of the ratio laid down by this Court in the aforestated decisions, the contention of the respondent that, the provisions of Section 88B are applicable to the present case cannot be accepted and it is held that, the Revenue Tribunal has clearly erred in accepting the contention of the respondent in that behalf.

9] As far as the contention of the learned counsel for the respondent that, there is delay at the behest of the legal heirs of Shripati G. Tikande in filing the application under Section 32G of the MTAL Act is concerned, the said contention cannot be accepted.

The learned Single Judge of this Court in the case of *L.J. Kriplani since deceased by his Legal Heirs Vs. Manik Aditwar Patil & Ors., reported in 2000(3) ALL MR 281,* while dealing with similar contention has held that, the provisions under Section 32G are merely for determining the purchase price in respect of lands which have been deemed to have been purchased by the tenant on the tillers day and the arguments advanced on behalf of the petitioners therein that, because of delay in initiating the said proceedings by tenants belatedly they have dis-entitled themselves from any relief has been negatived.

10] In the case of *Kacharu Lakhu Aher Vs. Masjid Mandwad Deosthan & Ors., reported in 1990(1) Mah.L.J. 440,* this Court while analyzing the provisions of Section 88(1)(a) of the said Act has held that, the land belonging to or held on lease from the Government are exempted. The lands in-question therein were not having or belonged to the Government nor were they leased from the Government and therefore, the exemption under Section 88(1)(a) of the MTAL Act did not cover such lands. That under Section 88(1) of the Act, the land must have been held as inam or vatan for service useful to the Government and assigned as remuneration to the person actually performing such service for the time being under Section 23 of the Bombay Hereditary Offices Act, 1874 or any other law for the time being in force shall be deemed to be land belonging to the Government.

11] In the present case such is not the case of either of the parties herein. Shripati G. Tikande was cultivating the said land for his own personal use and as per the revenue record, he was giving rent to the landlord i.e. the Vithoba Dev (Devasthan) of Sali Community. The record clearly indicates that, it is also not the case of the respondent that, the benefits accrued from the land cultivated either by Shripati G.

Tikande or his successors in-title was used for the benefit of the Devasthan Trust. Though it is the contention of the respondent even as on today that, it is in physical possession of the suit land, the revenue record produced before me does not support the said contention and it is contrary thereto.

12] The Supreme Court in the case of *Maruti Bala Raut Vs. Dashrath Babu Wathare & Ors. reported in AIR 1974 SC 2051,* has held that, the Tribunal while exercising its powers under Section 76 of the said Act, has no power to deal with the matter as an Appellate Authority and was not therefore entitled to appreciate the evidence and come to its own conclusion. It is further held that, the High Court while exercising its powers under Article 227 of the Constitution of India was not entitled to discuss the evidence and come to its own conclusion on the evidence as to who was in possession of the land. That was a matter for Revenue Authorities.

13] The afore-stated deliberation would lead to an irresistible conclusion that, the Revenue Tribunal has committed serious error in not only in re-appreciating the evidence on record but also by applying provisions which are not germane for decision of the issue involved in the present case and in view thereof, impugned Judgment and Order passed by the learned Member, Maharashtra Revenue Tribunal, Pune-1 in Case No.MRT/P.VIII-7/95 (B-136/95) Pune, dated 06/07/1998, is hereby quashed and set-aside. As a consequence thereof, the Judgment and Order dated 28/06/1993 passed in Application No. 5 of 1991 by the Agricultural Lands Tribunal, Shirur and in Tenancy Appeal No. 31 of 1993 by the Sub-Divisional Officer, Shirur Sub-Division, Pune, dated 18/07/1995 are hereby upheld.

14] Petition is allowed in the aforesaid terms.

15] In view of disposal of the Petition, nothing survives in the Civil Application No.1481 of 2007 and is, accordingly, disposed off.

[A.S. GADKARI, J.]