

**(2011) 11 BOM CK 0065**

**In the Bombay High Court**

**Case No : Writ Petition No. 6559 of 2002**

|                                                  |            |
|--------------------------------------------------|------------|
| Shankar Keshav Chopde (deceased) through L.Rs.   | APPELLANT  |
| Vs                                               |            |
| Shri Dnyanu Babu Shinde (deceased) through L.Rs. | RESPONDENT |

**Date of Decision : 25-11-2011**

**Acts Referred:**

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 43(B), 70, 76, 9

**Citation :** (2012) 2 ALLMR 275 : (2012) 2 BomCR 627 : (2012) 1 MhLj 915

**Hon'ble Judges :** Girish Godbole, J

**Bench :** Single Bench

**Advocate :** A.M. Kulkarni, for the Appellant; N.J. Patil, Advocate for Respondent  
Nos. 1A to 1D, for the Respondent

## **Judgement**

Girish Godbole, J.—Heard Mr. Kulkarni, Advocate for the Petitioners and Mr. N.J. Patil, Advocate for Respondents. In this Petition following order was passed on 20/3/2003.

The issue referred by the Civil Court to the Tenancy Court was, "What is the reasonable rent of the suit land?" On the basis of evidence on record, the Tenancy Awal Karkun, Panhala held that the reasonable rent of the suit land was Rs. 600/-for the year 1975-76. The Appeal Court i.e. Sub Divisional Officer maintained the said finding. The submission of the learned counsel for the petitioner is that Maharashtra Revenue Tribunal did not appreciate the nature of issue before the Tenancy Court and the finding recorded on that issue and in a very cryptic manner the orders of the tenancy Courts below were set aside and fresh enquiry was ordered which was not justified.

2. Issue notice to the respondents to show cause why writ petition be not admitted and disposed of at motion hearing stage itself. Notice is made returnable after four weeks. Hamdast granted.

2. Rule. Rule made returnable forthwith by consent of the parties.

3. In RCS No. 97 of 1978 which is filed by the Petitioners against the

Respondents for recovery of rent, one of the issues which were framed was "What is the reasonable rent of the suit land ?". Since the concept of reasonable rent is referable to Section 43(B) of the B.T. & A.L. Act, 1948 and since the Mamlatdar has exclusive jurisdiction to determine the question as to what is the reasonable rent u/s 70(ma) of the said Act, the said issue was referred to the Mamlatdar.

4. By Judgment and Order dated 30/10/1982 Tenancy Awal Karkoon determined that the reasonable rent was Rs. 600/-per annum. The Appeal filed by the Respondents before the SDO, Shahuwadi, Division Kolhapur being Tenancy Appeal No. 15 of 1983 was dismissed on 29/1/1988. Aggrieved by these orders the Respondents filed Tenancy Revision Application No. MRT-KP-132 of 1988 in the MRT. By impugned Judgment and Order dated 29/9/2001 the learned Designated Member, M.R.T., Pune has remanded the matter back to the Trial Court for fresh enquiry and decision as per law. It is this order which is impugned by the original Plaintiffs in the Suit.

5. Mr. Kulkarni submitted that a full opportunity had already been given to the parties to lead evidence and accordingly, the parties had already led oral and documentary evidence; a finding of fact has been recorded by the Tenancy Awal Karkoon and the SDO and, considering the scope of Section 76, it was not open to the MRT to remand the matter back to the Trial Court unless and until the MRT reaches a conclusion on independent appreciation of evidence that the evidence available on record was insufficient or that an opportunity had been denied to lead evidence or that the finding of fact recorded by the Mamlatdar and SDO were either perverse or were contrary to the record. He submitted that the MRT should have decided revision on its own merits itself.

6. On the other hand, Mr. Patil supports the impugned order. He relies on the Judgment of the Single Judge (Patel, J) dated 3rd March, 1965 in Special Civil Application no. 1120 of 1964 in case of Anna Balappa Dattawade & Anr. v/s. Sayed Yakub Badriuddin Desai & ors. and submitted that the Mamlatdar and SDO had proceeded on the wrong assumption that Section 43B is applicable. According to Mr. Patil, in which position prior to 1956 was required to be taken into consideration and since the evidence on record was not found to be sufficient, the MRT has taken a liberal view and had passed the order of remand.

7. I have considered rival submissions. Section 76 of the B.T. & A.L. Act, 1948 reads thus :

#### 76. Revision

(1) Notwithstanding anything contained in the Bombay Revenue Tribunal Act, 1939, an application for revision may be made to the [Maharashtra Revenue Tribunal] constituted under the said Act, against any order of the Collector on the following grounds only :

(a) that the order of the Collector was contrary to law;

(b) that the Collector failed to determine some material issue of law; or

(c) that there was a substantial defect in following the procedure provided by this Act, which has resulted in the miscarriage of justice.

(2) In deciding applications under this section the [Maharashtra Revenue Tribunal] shall follow the procedure which may be prescribed by rules made under this Act after consultation with the [Maharashtra Revenue Tribunal].

This Section has been repeatedly interpreted by the Supreme Court and it has been held that the power of revision cannot be exercised lightly. In the present case as noted above, the issue which was referred to the Mamlatdar was as to what is the reasonable rent of the land. The issue was not relating to as to what is the reasonable rent of the land in the year 1956. The issue therefore essentially related to the reasonable rent of the land for the period for which the landlady Plaintiff had demanded the rent in the Civil Suit. Mamlatdar and SDO had reached some conclusion on the basis of material available on record. It was no doubt open to the MRT to reverse the finding of fact if such findings are found to be contrary to the record or are found to be perverse. In the present case, unfortunately the learned Designated Member of MRT has not made any independent appreciation nor reached an independent finding nor the Member has reached a conclusion that there is perversity of finding. In fact the impugned order virtually contains no reasons as to why the case is being remanded. It was not a grievance of any of the parties and particularly of the Respondents that the Trial Court had not allowed them to produce certain evidence. In view of this, the submission of Mr. Patil that MRT has taken liberal view which cannot be interfered with, cannot be accepted. Whether the provisions of Section 43B apply or not is a matter which also has to be decided by the Authorities below but in the present case the scope of reference is the issue which has been framed by the Civil Court and referred for the decision of the Authorities under the Act.

8. Reliance placed on the Judgment in the case of Anna Balappa Dattawade (supra), to my mind, is not apt. That Judgment essentially turns on the facts of that case. In that case there was no dispute regarding the quantum of rent. In this case parties have raised a dispute mainly about quantum of rent and in that context issue is framed by the Civil Court which has been referred. Mr. Patil states that the issue is referable to section 9 and has to be decided u/s 70(c) of the Act. I am unable to agree for the simple reason that the issue which is framed is for finding out "reasonable rent" which is a concept available u/s 43B and has to be resolved u/s 70(ma) of the Act.

9. Hence I have reached a conclusion that the learned Member of MRT has committed an error apparent on the face of record by remanding back the matter to the Tahasildar. On the other hand, it was necessary to decide the revision on the basis of material available on record. All questions regarding the respective contentions of the parties including contentions regarding factual aspects and provisions of law will have to be and are hereby kept open to be agitated before

the MRT. Rule is made absolute. Impugned Judgment and Order dated 29/9/2001 is quashed and set aside, Revision Application is restored to its file and the learned Member of the MRT is directed to hear and decide the Revision Application on its own merits without being influenced by this order. It is clarified that setting aside of the order of the MRT which is impugned in this Petition should not be construed as confirmation of the Judgment and Order passed by the Tahasildar and S.D.O.