

**(1998) 10 BOM CK 0021**

**In the Bombay High Court**

**Case No : Writ Petition No. 5954 of 1997**

Shri Genu Laxman Shinde and ohters

APPELLANT

Vs

Shri Chandrakant Dagadu Kotulkar

RESPONDENT

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**Date of Decision : 14-10-1998**

**Acts Referred:**

Bombay Revenue Tribunal Act, 1957 — Section 4, 7, 82  
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32  
Government of India Act, 1935 — Section 296  
Maharashtra Land Revenue Code, 1966 — Section 315, 320, 322

**Citation :** (1999) 1 ALLMR 44 : (1999) 1 BomCR 278 : (1999) 1 MhLj 235

**Hon'ble Judges :** A.P. Shah, J

**Bench :** Single Bench

**Advocate :** Anil V. Anturkar, for the Appellant; R.S. Apte, Adv ., for the Respondent

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## **Judgement**

A.P. Shah, J.—Rule. Respondent waives service. By consent petition is placed for final hearing.

2. This writ petition is directed against the order passed by the Maharashtra Revenue Tribunal reviewing its earlier order passed in revision and remanding the matter to the Agricultural Lands Tribunal, Maval, for de novo enquiry u/s 32-G of the Bombay Tenancy and Agricultural Lands Act, 1948.

3. The facts briefly are that the petitioners are owners of the lands bearing Survey Nos. 35/A-3 and 57/1-B admeasuring 5 acres 35 gunthas and 35 gunthas respectively situated at village Khadakale, Tahsil Haveli, District Pune. It is an admitted position that the name of deceased Dagadu Kotulkar, i.e., father of the respondent was shown as tenant prior to 1st April, 1957 in 7/12 extract. An enquiry was held u/s 32-G of the Act and in the said enquiry, the sale was declared ineffective as the tenant failed to remain present before the Agricultural Lands Tribunal, ("A.L.T." for short). Thereafter an enquiry was held u/s 32-P wherein possession of deceased landlord, i.e., Genu Laxman Shinde was

confirmed vide order dated 6th December, 1964. A mutation entry to that effect was duly made in the village record. Nearly 24 years after the orders were passed u/s 32-G and 32-P, the respondent as constituted attorney of deceased Dagadu Kotulkar filed Appeal No. 64 of 1987 before the Sub-Divisional Officer, Haveli, challenging the orders passed by the A.L.T. u/s 32-G and 32-P of the Act. By order dated 30th March, 1991, the appeal was allowed by the S.D.O. and the order of the A.L.T. was set aside and the matter was remitted back to the A.L.T. for fresh enquiry. A revision application was carried before the Maharashtra Revenue Tribunal, Pune, by the petitioners which came to be allowed by the Revenue Tribunal by judgment, and order dated 26th December, 1995 whereby the Revenue Tribunal set aside the order passed by the S.D.O. and restored the order of the A.L.T. The Revenue Tribunal held inter alia that the appeal filed before the S.D.O. was without authority; that the appeal stood abated on account of the death of original applicant, Dagadu Kotulkar and lastly that the appeal of the respondent was hopelessly barred by limitation. On 15th July, 1991, the respondent filed application for review before the Revenue Tribunal which came to be allowed by the impugned order dated 10th October, 1997.

4. The first point argued on behalf of the petitioner by Shri Anturkar is that the Maharashtra Revenue Tribunal did not have power under the Tenancy Act to review its own decision. Section 76 of the Act invests the Maharashtra Revenue Tribunal with powers of revision and limits the exercise of that power only to the three grounds, namely, that the order of the Collector was contrary to law; that the Collector has failed to determine some material issue of law; or that there was a substantial defect in following the procedure provided by the Act, which has resulted in the miscarriage of justice. Subsection (2) provides that in deciding applications under this section, the Maharashtra Revenue Tribunal shall follow the provisions which may be prescribed by the rules made under this Act after consultation with the Maharashtra Revenue Tribunal. Thus, according to Mr. Anturkar, it is clear that the Bombay Tenancy Act which creates new rights, prescribes a new procedure and creates special forums does not invest the Maharashtra Revenue Tribunal with the power of review. Therefore, according to Mr. Anturkar the order passed by the Revenue Tribunal is wholly without jurisdiction. In support of his submission, Mr. Anturkar placed reliance on the decision of M.S. Deshpande, J., in *Anoopchand Nathmal Baid Vs. Maharashtra Revenue Tribunal and Others*, . Shri Apte, learned Counsel for the respondent on the other hand referred to the provisions of section 322 of the Maharashtra Land Revenue Code, 1966 which permits the Maharashtra Revenue Tribunal either on its own or on the application of any party interested and where the State Government is a party u/s 320 on the application by that government to review its own decision or order in any case, and pass in reference thereto such order as it thinks just and proper. Mr. Apte argued that power of review u/s 322 of the Land Revenue Code is not limited to the exercise of the functions enumerated in section 315 of the Code, but that power is attached to the Tribunal and it can be exercised by the Tribunal, whatsoever powers might be conferred upon it from

time to time. Therefore, when exercising the revisional powers u/s 76 of the Bombay Tenancy Act, the Tribunal has power to review its own decisions. In this behalf, Mr. Apte relied upon the judgment of the Division Bench in *Raghunath Gambirshet Wani v. Ganpat Motiram Mahar* 1952(LV) Bom.L.R. page 298.

5. Now first question is whether the Tribunal has jurisdiction to review its own order. It is undoubtedly true that the Tribunal or a Court has no inherent jurisdiction to review its own decision and such power must be conferred expressly by a statute. It is required to be stated that The Maharashtra Revenue Tribunal was first constituted on 1st April, 1937 by the then Governor of Bombay under the powers conferred on him by section 296 of the Government of India Act, 1935. Later on, as provided in the said section 296, the Provincial Legislature enacted the Bombay Revenue Tribunal Act, 1939, and made statutory provisions for constituting the said Tribunal. According to the Act of 1939, the Tribunal was to exercise jurisdiction to entertain appeals and revision applications in revenue cases as was vested in the Government immediately before 1st April, 1937. The Act of 1939 continued to be in force till 31st May, 1958. It was replaced by the Bombay Revenue Tribunal Act, 1957. The Bombay Revenue Tribunal Act, 1957, has now been replaced and provisions relating to the constitution, etc. of the Revenue Tribunal stand included in Chapter XV the of Maharashtra Land Revenue Code, 1966.

6. In the case of *Raghunath v. Ganpat* (supra) question whether the Revenue Tribunal has jurisdiction to review its own decisions directly fell for consideration before the Division Bench presided over by Chagla, C.J. On examination of the various provisions contained in the Maharashtra Revenue Tribunal Act, 1939, which was prevailing at that time, the Division Bench came to the conclusion that the Maharashtra Revenue Tribunal has got power to review its own decision. The Division Bench observed:

"Now, the first question is as to whether the Tribunal has jurisdiction to review its own orders. It is perfectly true that a Tribunal or a Court has no inherent jurisdiction to review its own decisions. Such power must be conferred expressly by statute and Mr. Chandrachud has drawn our attention to the fact that in the Bombay Tenancy Act which gives revisional powers to the Revenue Tribunal u/s 76, there is no provision with regard to review. Attention has also been drawn to Rule 25 which the Tribunal has framed under sections 76 and 82 of Act, and that rule provides that in deciding appeals and applications for revision, in matters not provided for in these rules the Tribunal shall so far as may be follow the procedure laid down under the relevant provisions of the Code of Civil Procedure, 1908, and in this connection Mr. Chandrachud is right when he contends that the provisions of the CPC are only made applicable in the actual hearing and deciding all appeals and applications for revision. This rule cannot confer any jurisdiction upon the Tribunal to entertain a review application which follows upon a decision in an appeal or in an application for revision. Then we have the Bombay Revenue Tribunal Act (XII of 1939). It was by that Act that the Bombay Revenue Tribunal

was set up and its powers and functions are defined in section 4 and the powers and functions there set out relate to revenue matters. Then we have section 7 which in terms expressly confers upon the Tribunal the power of review. But the contention of Mr. Chandrachud is that section 7 is limited by section 4 and the power of review is only conferred upon that Tribunal which exercises the powers and functions mentioned in section 4. Therefore, according to Mr. Chandrachud, when the Legislature conferred fresh powers upon the Revenue Tribunal by giving it revisional powers u/s 76, inasmuch as the Legislature did not confer upon the Tribunal the power to review its own decisions when exercising those revisional powers, it is not open to the Tribunal to fall back upon section 7 in order to find jurisdiction to review its own decisions. In our opinion that is not the proper interpretation to put upon section 4 and section 7 of Act XII of 1939. That Act sets up a new Tribunal and section 7 confers upon that Tribunal generally certain power, viz, the power and jurisdiction to review its own decisions. Section 4 defines its functions and so long as this Act stood on the statute book, the only functions which the Tribunal could discharge were the functions mentioned in section 4 and in discharging those functions it could exercise the power of review conferred upon it u/s 7. But when the Tenancy Act was passed, further functions were allocated to the Tribunal, and one of those functions was the power to act as a revisional body in certain tenancy matters specified in the Tenancy Act. But when the functions of the Tribunal were increased, the Tribunal still had the power to review its decisions conferred upon it u/s 7. The power to review conferred upon it u/s 7 was not limited to the exercise of the functions enumerated in section 4 but that power attached to the Tribunal as such and it could always be exercised by the Tribunal, whatever powers might be conferred upon it from time to time. Therefore, the power to review is the power that attaches to the Tribunal as such irrespective of what jurisdiction may be conferred upon it from time to time by the Legislature. Therefore, it would not be correct to say that as section 76 of the Tenancy Act conferred a new power upon the Tribunal that power had to be exercised without the power of review conferred upon it u/s 7. As we said before, that power attached to the Tribunal as such and the Tribunal could review its own decisions in whatever capacity those decisions might be arrived at and whatever jurisdiction the Tribunal might be exercising. Therefore, in our opinion, when exercising its revisional powers u/s 76, the Tribunal has the power to review its own decisions."

7. Mr. Anturkar sought to distinguish the decision of the Division Bench in Raghunath v. Ganpat on the ground that since then the provisions pertaining to the constitution of the Maharashtra Revenue Tribunal have been incorporated in the Maharashtra Land Revenue Code. According to Mr. Anturkar, u/s 315 of the Maharashtra Land Revenue Code, the Maharashtra Land Revenue Tribunal's jurisdiction is confined only to the enactment mentioned in Schedule J to the Act and since the said section starts with a non-obstinate clause it must be presumed that the power of review which is conferred on the Revenue Tribunal u/s 322 of the Land Revenue Code is also confined to the enactments mentioned in

Schedule J of the Code and not to the cases arising under the Bombay Tenancy Act. I am unable to accept the submission of the learned Counsel. It is true that Maharashtra Land Revenue Act, stands repealed and the provisions now stand incorporated in the Maharashtra Land Revenue Code. Section 309 of the Code provides for establishment of the Maharashtra Revenue Tribunal and further provides that it shall consist of the President and such number of other members as the State Government may appoint. u/s 315 jurisdiction is conferred on the Tribunal in cases arising under the Land Revenue Code and also the cases arising under the provisions enacted specified under Schedule J. The Bombay Tenancy Act is not included in Schedule J. Section 322 then provides for review. Proviso to section 322 restricts right of the party to move the Tribunal and review can be only on discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of such party or could not be produced ,by the parties at the time when its decision was made or that there has been some mistake or error apparent on the face of the record or for any other sufficient reasons and requires notice to be given to the party interested to appear or being heard in support of the order. In the light of the observations made by the Division Bench in Raghunath's case, it is clearly seen that the power to review conferred upon the Revenue Tribunal is not restricted to the exercise of the functions enumerated in section 315 but that power is attached to the Tribunal as such and it could always be exercised by the Tribunal whatever powers might be conferred upon it from time to time. As already stated the Revenue Tribunal was established under the Act of 1939 which was replaced by Act of 1958 and now the provisions are incorporated in the Maharashtra Land Revenue Code. I am in respectful agreement with the view taken by the Division Bench that the power of review is attached to the Tribunal and the Tribunal could review its own decision in whatever capacity to the decision arrived and whatever jurisdiction the Tribunal might be exercising. Therefore, it is not possible to accept the argument of Mr. Anturkar that the power of review is restricted only to cases arising under the enactment mentioned at Schedule J to the Maharashtra Land Revenue Code.

8. In the case of Anoopchand v. M.R.T., Nagpur, M.S. Deshpande, J., was considering a question of the power of review of the Maharashtra Revenue Tribunal in cases arising under the Vidarbha Tenancy Act. The learned Judge seems to have taken a view that the power of review is confined only to the cases arising out of enactment mentioned in schedule J. On going through the judgment of the learned Judge, it is seen that the Division Bench judgment in Raghunath's case was not cited before the learned Single Judge and therefore I am unable to agree with the view expressed by the learned Judge.

9. The next contention of Mr. Anturkar is that there is no error apparent on the face of the record in the present case. The Tribunal, therefore, was not right in reviewing its original judgment. As indicated earlier; the Tribunal allowed the revision application on three grounds viz., (i) that the appeal filed before the S.D.O. was without authority; (ii) that the appeal before the S.D.O. stood abated

on account of the death of the original applicant; (iii) that the appeal was barred by limitation. As far as ground of limitation is concerned, Tribunal observed:

"It is true that in the record of the proceeding u/s 32-G, notices are not prescribed. There is every possibility of loss of notices. All the same, the judgment and order of the learned A.L.T. mentioned that the tenant failed to appear before the Tribunal. This fact indicates that the tenant was noticed and in spite of the notice, he did not appear before the A.L.T. This fact is further supported by the record on the proceedings u/s 32-P. In the proceeding u/s 32-P i.e. a panchanama written at the back of the notice. The panchanama shows that the deceased Dagadu Namdeo Kotulkar was not residing in the village and he had gone to Bombay. His where about at Bombay were not known. Hence, the copy of the notice was affixed on the land seen that the 32-P proceeding was held in 1963. Even in 1963 the deceased Dagadu Kotulkar was not residing in the village but had gone to Bombay. This fact would also show that at least since 1963 Dagadu Kotulkar was not in possession of the land in the suit. Under the circumstances, there is no substance in the say of the opponent that the notices of the proceedings were not served on the tenants. The learned S.D.O. has failed to consider the peaceful and continuous possession of the landlord, i.e., the application since 1957 till today. Obviously for such a length of time the tenant was not in possession of land at all. In result his remedy for possession was also barred by limitation."

10. In review proceedings the Revenue Tribunal practically re-appreciated the evidence and recorded finding that the notices were not served on the respondent in the proceedings u/s 32-G. In that behalf, the Tribunal has observed:

"I have gone through the record and judgment of Hon"ble Member, Maharashtra Revenue Tribunal and found that the review applicant was not noticed in the trial Court and proceeding was made and enquired in the absence of present review applicant. So it is mandatory provision to issue a notice to the concerned party is interested in the matter. But in the present case the Agricultural Lands Tribunal was not issued notice to present review applicant and it was necessary and abundant duty of the Lower Court to issue a notice to the present review applicant. I have also observed that after the lapse of 20 years after the decision of A.L.T. was not communicated to the tenant and hence without notice and the review applicant was not having any knowledge about the judgement and hence he preferred an appeal before the Sub Divisional Officer and Sub Divisional Officer allowed the same as it is not and the matter was not communicated in respect of the tenant. So Sub Divisional Officer has rightly observed that there was time barred appeal and he condoned the delay as review applicant was not informed with the judgment passed by the Agricultural Lands Tribunal. So considering the nature of the case it is necessary to see as to whether enquiry is made properly or not by the Agricultural Lands Tribunal and ex-parte decision was held by the trial Court which is not just and proper. No proper opportunity is

given to the tenant and hence considering this point the Hon"ble Member, Maharashtra Revenue Tribunal has not come to the conclusion in respect of the above point and hence considering the merits of the case I am convinced that the matter if remanded to the trial Court for fresh and de novo enquiry which will meet ends of justice."

11. It is difficult to see as to how in the circumstances of the present case it can be said that there was an error apparent on the face of the record. As has been pointed out in Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi, an error apparent on the face of the record exists if of two or more views canvassed on the point, it is possible to hold that the controversy can be said to admit of only one of them. If the view adopted by the Court in the original judgment is a possible view having regard to what the record states it is difficult to hold that there was an error apparent on the face of the record.

12. The position in the present case therefore is that the Revenue Tribunal did have power to review the decision which it had rendered but it could not have reviewed its order suo motu as there was no error on the face of the record which could have justified the review of the decision rendered. In the result petition succeeds. The impugned order dated 10th October, 1997 passed by the Revenue Tribunal is set aside. Needless to say that the respondent is free to adopt appropriate proceeding against the original order of the Revenue Tribunal dated 26th December, 1995.

13. Petition allowed.