



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1377 OF 1998

Khanderao Bhau Desai

.. Petitioner

Versus

~~Gajanan Mahadeo Kadam~~

(Since Deceased) through by LRs

~~Chandrakant Gajanan Kadam~~

(Since deceased) through LRs

Chaya Chandrakant Kadam and Ors.

.. Respondents

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- Mr. C.G. Gavnekar a/w. Mr. Ashutosh Gavnekar and Mr. Rohit Parab, Advocates for Petitioner.
- Mr. Abhay S. Khandeparkar, Senior Advocate a/w. Mr. Rushikesh G. Bhagat, Advocates i/by Khandeparkar & Associate for Respondent No.1.

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CORAM : MILIND N. JADHAV, J.

DATE : JUNE 30, 2025.

JUDGMENT:

1. Present Writ Petition challenges the judgment and order dated 01.01.1998 passed by the Maharashtra Revenue Tribunal, Pune – 1 (Camp at Kolhapur) (for short “**MRT**”) in MRT Revision Application No.58 of 1992 filed by the predecessor-in-title of Respondent Nos.1(a) to 1(e) whereby the MRT has set aside the order passed by the Sub-Divisional Officer (Assistant Collector) dated 25.01.1991 and order dated 10.07.1990 passed by the Additional Tahsildar and A.L.T., Panhala.

2. The relevant facts necessary for determination of the present Writ Petition are as follows:-

2.1. Petitioner's predecessor-in-title Bhau Tukaram Desai was admittedly a tenant of land bearing Survey No.137 (1) admeasuring 9 Acres and 6 Gunthas and assessed at Rs.11/- situated in Village Kate Bhogaon, Taluka Panhala, District Raigad (for short "**said land**"). Predecessor-in-title of Respondent Nos.1(a) to 1(e) namely Mahadeo Sripati Kadam was admittedly the landlord of the said land.

2.2. On 22.11.1968, landlord Mahadeo Sripati Kadam filed Application under Section 88C of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short "**the said Act**") being Tenancy Case No.57 of 1968 in the Court of Tenancy Aval Karkun, Panhala. Considering the financial position of the said Mahadeo Sripati Kadam, the Tenancy Case was allowed and exemption certificate dated 28.02.1970 was granted to him under Section 88C of the said Act.

2.3. The order dated 28.02.1970 and certificate were challenged by the predecessor-in-title of Petitioner by filing Tenancy Appeal No.75 of 1971 and Tenancy Appeal No.76 of 1971. Both these Appeals were heard by the Special Deputy Collector, Kolhapur who by order dated 30.08.1971 allowed both Appeals and remanded the matter back to the Court of Tenancy Aval Karkun, Panhala for a fresh decision in accordance with law.

2.4. After hearing the parties, by order dated 30.04.1978 Application below Section 88C of the said Act filed by Respondent Nos.1(a) and 1(e)'s predecessor-in-title was partly allowed and Exemption Certificate under Section 88C of the said Act was directed to be issued only in respect of the share of Respondent No.1 - Gajanan Mahadeo Kadam to the extent of 0.06 annas i.e. $\frac{3}{8}$ th share in the said land.

2.5. Being aggrieved by this order predecessor-in-title of Petitioner filed Tenancy Appeal No.59 of 1978 and predecessor-in-title of Respondent Nos.1(a) to 1(e) filed Tenancy Appeal No.63 of 1978 before the Assistant Collector, Shahuwadi Division, Kolhapur. By common order dated 31.05.1979 both Tenancy Appeals were dismissed thereby confirming the order dated 30.04.1978 passed by the Court of Tenancy Aval Karkun, Panhala.

2.6. Thus according to Petitioner order dated 30.04.1978 was confirmed since no further Appeal was filed to the extent of Respondent No.1 being entitled to share of 0.06 annas i.e. $\frac{3}{8}$ th share in the said land.

2.7. By virtue of the above proceedings, predecessor-in-title of the Respondent Nos.1(a) to 1(e) i.e. landlord became entitled to $\frac{3}{8}$ th share in the said land whereas the balance land reverted back to the original tenant i.e. predecessor-in-title of the Petitioner under the

provisions of Section 88C.

2.8. In the interregnum on 30.04.1978 Regular Civil Suit No.86 of 1978 was filed by predecessor-in-title of Respondent Nos.1(a) to 1(e) for injunction against predecessor-in-title of Petitioner and two others. The Civil Suit was resisted by predecessor-in-title of Petitioner contending that he was the deemed purchaser of the said land to the extent of 5/8th share of the said land whereas the balance land belonged to the predecessor-in-title of Respondent Nos.1(a) to 1(e). On 10.11.1982, the Civil Suit was dismissed and claim for exclusive ownership in entirety of the said land was rejected.

2.9. Being aggrieved by dismissal of the Civil Suit, predecessor-in-title of Respondent No.1 filed Regular Civil Appeal No.416 of 1982 which was allowed by the Additional District and Sessions Judge, Kolhapur by judgment dated 30.01.1990 and the Civil Suit filed by predecessor-in-title of Respondent No.1 was decreed and he was declared as the exclusive owner of the said land.

2.10. Simultaneously on 14.10.1985 Petitioner filed Regular Civil Suit No.96 of 1985 against Respondent No.1 and 2 others seeking reliefs of perpetual injunction and declaration before the Civil Court at Panhala, Kolhapur. By judgement and order dated 21.02.2009 Regular Civil Suit No.96 of 1985 was decreed in favour of Petitioner by affirming the validity of the Adoption Deed dated 23.05.1973 as well

as upholding Petitioner's status as the deemed purchaser of the said land in view of the Section 32G proceedings. The prayer for perpetual injunction against Respondent No.1 was also allowed by the Civil Court.

2.11. It is seen that Appeal was filed against that judgement by Respondent No.1 which was dismissed for non-prosecution and thereafter Respondent Nos.1(a) to 1(e) preferred Miscellaneous Application for restoration of the said Appeal which was allowed by order dated 03.03.2020 and the said Appeal is still pending before the District Court.

2.12. In the meantime, proceedings under Section 32G of the said Act were initiated by the Petitioner. The Additional Tahsildar and A.L.T., Panhala, *inter alia*, came to the conclusion that 3/8th share of the said land by virtue of the order 30.04.1978 passed in Tenancy Case under Section 88C of the said Act was held by the predecessor-in-title of Respondent Nos.1(a) to 1(e) and therefore proceedings were initiated for fixing the price of the entire land. After following the due procedure as per the said Act, by order dated 10.07.1990 Petitioner stood declared as deemed to have purchased the said land to the extent of his 5/8th share of the land as on 19.02.1979.

2.13. Being aggrieved by order dated 10.07.1990, the successor-in-title of original landlord i.e. Respondent Nos.1(a) to 1(e) filed

Tenancy Appeal No.13 of 1990 which was dismissed by Assistant Collector, Shahuwadi Division, Kolhapur by order dated 25.01.1991.

2.14. Being aggrieved by the dismissal of Tenancy Appeal, predecessor-in-title of Respondent Nos.1(a) to 1(e) i.e. Respondent No.1 - landlord filed Revision Application No.58 of 1992 before the MRT which was incidentally allowed by order dated 01.01.1998 which is challenged by the Petitioner in this Court.

2.15. Hence, the present Writ Petition.

3. Mr. Gavnekar, learned Advocate for Petitioner would submit that the order of MRT is clearly erroneous as it fails to consider the effect of the certificate granted under Section 88C of the said Act to the predecessor-in-title of the Petitioner in respect of his share to the extent of 6 annas i.e. $3/8^{\text{th}}$ share in the said land. He would contend that claim of the landlord to the entire land was dismissed by the Court of competent jurisdiction on 30.04.1978 which is not considered by the MRT at all.

3.1. He would submit that certificate under Section 88C of the said Act was granted on 30.04.1978 thereby concluding right of the Petitioner's predecessor-in-title to be the deemed purchaser and this order became final as it was not challenged by the predecessor-in-title of Respondent Nos.1(a) to 1(e). He would submit that when the Revision Application was filed before the MRT, Respondent No.1 was

not the landlord of the entire land or owner thereof by virtue of order dated 30.04.1978 having been deemed to have been confirmed.

3.2. That apart on the point of law, he would contend that once certificate is granted under Section 88C of the said Act to the landlord either with respect to the whole or the part of the land, the tenant who is in possession of the balance land automatically becomes the deemed purchaser of the said balance land.

3.3. He would also draw the Court's attention to the fact that Civil Suit No.86 of 1978 filed by predecessor-in-title of Respondent Nos.1(a) to 1(e) was dismissed and it was held that predecessor-in-title of Respondent Nos.1(a) to 1(e) failed to prove that they were exclusive owner of the entire land. He would submit that though an Appeal was filed against the said judgment and decree by the predecessor-in-title of Respondent Nos.1(a) to 1(e), the Petitioner was not made a party to the said Appeal and therefore any decision in the said Appeal cannot bind the Petitioner.

3.4. He would submit that one of the grounds taken by predecessor-in-title of Respondent Nos.1(a) to 1(e) pertains to validity of adoption and adoption deed of the Petitioner as adopted son of Bhau Tukaram Desai who was the original tenant of the said land. He would submit that the argument that wife of the said Bhau Tukaram Desai rejected the incident of adoption of the Petitioner was

repeatedly argued in all forums by predecessor-in-title of Respondent Nos.1(a) to 1(e) for dis-entitling the Petitioner of any share in the said land. He would submit that however in so far as the factum of adoption and adoption deed is concerned, Petitioner approached the Civil Court in 1985 and the adoption deed was upheld and the Civil Suit was decreed in favour of Petitioner in the year 2009. Hence, according to him the ground of Petitioner not being the son and legal heir of the original tenant Bhau Tukaram Desai is now not available to the private Respondents.

3.5. He would urge the Court that in view of validity of the Certificate issued under Section 88C of the said Act, Petitioner is the deemed purchaser to the extent of 5/8th share in the said land which deserves to be upheld as there is a patent error committed by the MRT in not considering the said legal position.

3.6. In support of his submissions, he has referred to and relied upon the decision of the Single Judge of this Court in the case of *Maruti Jaywant Shinde Vs. Shantabai Baburao Gotharne and Ors.*¹ to submit that the jurisdiction of a Revisional Court cannot be equated to that of an Appellate Court and hence Revisional Court can interfere with the findings only within the permissible parameters as laid down in Section 76 of the said Act.

¹ 2021 (6) Mh.L.J. 351

3.7. In view of his above submissions, he would urge the Court to allow the Writ Petition and quash and set aside the order dated 01.01.1998 passed by the MRT and confirm the order dated 10.07.1990 passed by the Additional Tahsildar and A.L.T., Panhala which was upheld by order dated 25.01.1991 passed by the Additional Collector.

4. *PER CONTRA*, Mr. Khandeparkar, learned Senior Advocate for Respondent No.1 would submit that Smt. Tanubai, wife of original tenant Bhau Tukaram Desai has disowned the fact that Petitioner was the adopted son of Bhau Tukaram Desai by filing Affidavit dated 18.11.1987 in Regular Civil Appeal No. 416 of 1985. He would submit that if the wife of the original tenant has herself denied the claim of Petitioner being their adopted son then the plea raised by him that he being adopted son and legal heir of the original tenant Bhau Tukaram Desai after his demise stands vitiated. He would submit that even possession of the said land is with Respondent No.1 since inception i.e. 1979.

4.1. He would submit that claim of the Petitioner that the decision of the District Court, Kolhapur passed in Regular Civil Appeal No. 416 of 1992 would not be binding on him would not find favour with him as the original tenant Bhau Tukaram Desai was infact party to the said proceedings and through his legal heir i.e. his wife who

was party to the said proceedings. He would draw my attention to the fact that Petitioner herein had infact filed impleadment Application below Exhibit '36' in Regular Civil Appeal No.416 of 1982 which was rejected by the Court by order dated 20.04.1987 and that rejection was not challenged by the Petitioner. He would submit that therefore Petitioner cannot feign ignorance to the judgement and order dated 30.01.1990 passed by the District Court in Regular Civil Appeal No.416 of 1982 which declares Respondent No.1 as the exclusive owner of the said land. He would submit that the judgement and order dated 30.01.1990 remains unchallenged till date and hence Petitioner cannot be given benefit of his own inaction as the same is impermissible in law.

4.2. He would submit that by virtue of various orders of the Competent Revenue Authority, name of Respondent No.1 was mutated in the record of rights in 7 x 12 extract of the said land as the owner and occupant of the said land.

4.3. He would submit that the judgment and order dated 01.01.1998 passed by the MRT cannot be faulted with in such circumstances when it is clear that Respondent No.1 proved that he was in possession of the said land before the Civil Court and the Court declared him to be the exclusive owner of the said land in the year 1990 itself. He would therefore submit that the judgement and order

dated 01.01.1998 being a well reasoned order be upheld and present Petition be dismissed.

5. I have heard Mr. Gavnekar, learned Advocate for Petitioner and Mr. Khandeparkar, learned Senior Advocate for Respondent No.1 and with their able assistance perused the pleadings and record of the case. Submissions made by the learned Advocates have received due consideration of the Court.

6. In the present case it is seen that the both parties have filed multiple proceedings in relation to the said land before various Civil Courts. However the issue in the present Petition is restricted to determining Petitioner's challenge to order dated 01.01.1998 passed by MRT by reversing two concurrent orders which were in favour of the Petitioner.

7. It is seen that in the year 1990, by order dated 10.07.1990 the Court of Additional Tahsildar and A.L.T., Panhala allowed the Application under Section 32G of the said Act filed by Petitioner as tenant of the said land for fixing the price of the said land for purchasing the said land and thereby declared him as deemed to have purchased the said land as on 19.02.1979. That order is appended at Exhibit 'B' – page No.30 of the Writ Petition. Thereafter the said order was challenged by Respondent No.1 by filing Tenancy Appeal No.13 of 1990 before the Court of Assistant Collector, Shahuwadi Division,

Kolhapur on the ground that Petitioner is not the heir of original tenant Bhau Tukaram Desai and Respondent No.1 was the owner of the entire land. The said Appeal was dismissed by order dated 25.01.1991 which is appended at Exhibit 'C' – page No.37 of the Writ Petition. Respondent No.1 challenged both the above orders by filing Revision Application No.58 of 1992 before the MRT which was allowed by order dated 01.01.1998 which is impugned in the present Writ Petition.

8. What goes to the root of matter is the order dated 30.04.1978 passed by the Court of Tenancy Aval Karkun, Panhala directing issuance of Exemption Certificate under Section 88C of the said Act to the predecessor-in-title of Respondent Nos.1(a) to 1(e) to the extent of 3/8th share of the said land owing to and as a consequences of which the balance 5/8th share of the said land reverted back to Petitioner's predecessor-in-title. As is evident from the facts of the present case, initially by order dated 28.02.1970, the Court of Tenancy Aval Karkun, Panhala allowed Application filed by predecessor-in-title of Respondent Nos.1(a) to 1(e) in its entirety, however when the matter was remanded back to the Court of Tenancy Aval Karkun, Panhala pursuant to the decision in Appeals filed by Petitioner's predecessor-in-title, the Court of Tenancy Aval Karkun, Panhala by order dated 30.04.1978 granted Exemption Certificate

under Section 88C of the said Act to the predecessor-in-title of Respondent Nos.1(a) to 1(e) to the extent of determining his 3/8th share in the said land. The said order was challenged by the predecessor-in-title of Petitioner as well as predecessor-in-title of Respondent Nos.1(a) to 1(e) by filing two separate Tenancy Appeals which were both dismissed by order dated 31.05.1979. Hence it is undisputed that the order dated 30.04.1978 was upheld and became absolute and is therefore subsisting till date. Effect of this order is not taken into account by the MRT while passing the impugned order.

9. In the present case, the 88C Exemption Certificate was granted to predecessor-in-title of Respondent Nos.1(a) to 1(e) only with respect to his 3/8th share in the said land and not in respect of the entire land. Hence tenancy rights of Petitioner's predecessor-in-title were upheld and confirmed to the extent of 5/8th share in the said land. That is the bane and effect of Section 88C proceedings initiated by the landlord under the said Act.

10. It is seen that as a result of the aforesaid, predecessor-in-title of Respondent Nos.1(a) to 1(e) filed Application under Section 33B of the said Act and obtained possession of his share in the said land. If the predecessor-in-title of Respondent Nos.1(a) to 1(e) was dissatisfied with the Section 88C Certificate he ought to have filed appropriate proceedings for challenging the same after dismissal of his

tenancy Appeal by order dated 31.05.1979. Perusal of the record reveals that the said order was challenged by the predecessor-in-title of Respondent Nos.1(a) to 1(e) and parallelly he filed Civil Suit in the Civil Court at Panhala, Kolhapur seeking declaration that he is the sole owner of the said land in its entirety. Such filing of multiple proceedings for reliefs of similar nature for the same cause of action is impermissible in law.

11. It is seen that after the predecessor-in-title of Respondent Nos.1(a) to 1(e) obtained possession of his 3/8th share in the said land, Petitioner herein approached the Additional Tahasildar and A.L.T., Panhala by filing Application under Section 32G of the said Act for determination and fixation of price of the land to be paid by him for purchasing the 5/8th share in the said land. The Additional Tahasildar and A.L.T., Panhala after due consideration of the material on record determined the price of the said land to the extent of 5/8th share in the said land and by order dated 10.07.1990 declared Petitioner as deemed to have purchased the 5/8th share in the said land as on 19.02.1979 and directed issuance of Purchase Certificate under Section 32M of the said Act to the Petitioner after payment of purchase price and expiry of the appeal period.

12. Perusal of the order dated 10.07.1990 reveals that it is a well reasoned order passed by the Additional Tahasildar and A.L.T.,

Panhala after considering the material on record as well as totality of circumstances and it correctly records the existence of tenant and landlord relationship between Petitioner's father and Respondent No.1(a) to 1(e)'s predecessor-in-title. Though Respondent No.1 has denied existence of any such relationship, perusal of the record and more specifically various orders of the Court affirm the same and hence there cannot be any dispute regarding the same. It needs to be noted that initiation of proceedings by the landlord under Section 88C of the said Act itself amounts to admission by landlord about the landlord – tenant relationship and tenant's right in the property.

13. As a consequence of grant of exemption only to the extent of $3/8^{\text{th}}$ share and Respondent No.1 obtaining possession of the said $3/8^{\text{th}}$ share, it was implied that Respondent No.1 or his predecessor-in-title were not in possession of the entire land but it was Petitioner's father who was in possession being the tenant of the said land and was cultivating the said land. It is in these facts and circumstances that the order dated 10.07.1990 was passed and Petitioner was declared as deemed purchaser of the said land to the extent of his $5/8^{\text{th}}$ share.

14. In so far as the contention of the Respondent No.1 that Petitioner is not the legal heir of the tenant Bhau Tukaram Desai as his wife Smt. Tanubai filed an Affidavit in the Civil Court denying the said fact is concerned, this would not in any event be a ground to set aside

the order passed under Section 32G of the said Act. Furthermore the registered Adoption deed dated 23.05.1973 has already been proved by Petitioner and has been upheld by the Civil Court in the year 2009. Furthermore the Appeal against that decision is still pending before the District Court and therefore this ground taken by the Respondent No.1 also fails.

15. It also needs to be noted that the Revision Court while passing the impugned order dated 01.01.1998 has overturned two concurrent decisions which were in favour of the Applicant. Under Section 76 of the said Act, the Tribunal is exercising a limited revisional jurisdiction. The scope and extent of revisional jurisdiction has been discussed *in extenso* by this Court in the case of **Maruti Jaywant Shinde** (*supra*) in paragraph Nos.12 to 17 and 23 which are reproduced below for immediate reference:-

“12. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties. The only question which falls for consideration in the present petition is whether the MRT has exceeded its revisional jurisdiction under section 76 of the Act.

13. Before advertng to the question raised in the Petition, it would be appropriate to consider the scope and extent of the revisional jurisdiction and statutory provisions pertaining to the revisional jurisdiction of the MRT under the Act. In Hindustan Petroleum Corporation Limited v. Dilbahar Singh, 2014 Mah LJ OnLine SC 156 : (2014) 9 SCC 78, the Constitution Bench of the Hon'ble Supreme Court, while considering the scope of the revisional jurisdiction of the High Court under various Rent Control and other legislation has highlighted the limited nature of the revisional jurisdiction and drawn distinction between appellate and revisional jurisdiction as under:—

“25 ...Conceptually, revisional jurisdiction is a part of

appellate jurisdiction, but it is not vice versa. Both, appellate jurisdiction and revisional jurisdiction are creatures of statutes. No party to the proceeding has an inherent right of appeal or revision. An appeal is continuation of suit or original proceeding, as the case may be. The power of the appellate Court is co-extensive with that of the trial Court. Ordinarily, appellate jurisdiction involves rehearing on facts and law but such jurisdiction may be limited by the statute itself that provides for appellate jurisdiction. On the other hand, revisional jurisdiction, though, is a part of appellate jurisdiction but ordinarily it cannot be equated with that of a full fledged appeal. In other words, revision is not continuation of suit or of original proceeding. When the aid of revisional Court is invoked on the revisional side, it can interfere within the permissible parameters provided in the statute. It goes without saying that if a revision is provided against an order/appellate authority the decision of the revisional Court is the operative decision in law. In our view, as regards the extent of appellate or revisional jurisdiction, much would, however, depend on the language employed by the statute conferring appellate jurisdiction and revisional jurisdiction."

14. Having considered the scope of the revisional powers in general, it would now be relevant to refer to section 76 of the Act, which defines the contours of revisional jurisdiction of the MRT. Section 76 reads as under:—

"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 the section the Maharashtra Revenue Tribunal shall follow the procedure which may be prescribed by rules made under this Act after consultation with the Maharashtra Revisional Tribunal."

15. A plain reading of this provision indicates that the scope of interference in revisional jurisdiction is restricted to the grounds specified in the three clauses of sub-section (1) of section 76. As it has been held by the Apex Court in *Rahimatulla Rahiman Sarguru v. Bapu Hari Mane*, (1979) 4 SCC 391, the powers of Revision entrusted to the Maharashtra Revenue Tribunal under

section 76 of the Bombay Tenancy and Agricultural Lands Act, 1948, are practically identical with the Second Appellate powers of the High Court Under section 100 Civil Procedure Code before it was amended by Act 104 of 1976.

16. In *Shamrao Maruti Patil v. Shantabai Dattatraya Salokhe*, (1995) 1 Mah LJ 668, this Court, while considering the scope of revisional powers, under section 76 of the Act has observed that:

“9....It is well-settled that if a decision is based on evidence, however, unsatisfactory the judgment may be, it does not cease to be question of fact and unless the Tribunal finds that there was no evidence for the finding of fact, the mere insufficiency of evidence or defect in the appreciation of evidence will not convert a question of fact into a question of law. Whether the proof of a particular fact is satisfactory or not is for the fact finding authority to determine. Adequacy of evidence or sufficiency of evidence cannot be a question of law and the Tribunal, in exercise of its revisional jurisdiction, cannot re-appreciate the evidence and give a fresh conclusion of its own unless it holds that the finding of the Appellate Authority is perverse. The scope and power of revision under section 76 of the Act came up for consideration before the Supreme Court in *Baldevji v. State of Gujarat*, (sic *Rahimatulla Rahiman Sarguru* (1979) 4 SCC 391 supra,) wherein it was held that the powers of revision entrusted to the Maharashtra Revenue Tribunal under section 76 of the Bombay Tenancy and Agricultural Lands Act, 1948, are practically identical with the second appellate powers of the High Court under section 100 of the Civil Procedure Code before it was amended by Act 104 of 1976. The scope and ambit of section 100 of the Code of Civil Procedure is not more *res integra*. As observed by the Supreme Court in *Ramachandra v. Ramalingam*, the exercise of power under section 100 of the Code of Civil Procedure is confined to cases where the High Court is satisfied that the decision is contrary to law or some usage having the force of law, or that the decision has failed to determine some material issue of law or usage having the force of law, or if there is a substantial error or defect in the procedure provided by the Code, or by any other law for the time being in force which may have produced error or defect in the decision of the case upon the merits. Only in such cases, the High Court can interfere with the conclusions of the lower appellate Court. It was made clear that the error or defect in the procedure referred to in section 100 of the Code of Civil Procedure clearly and unambiguously indicates an error or defect connected with, or relating to the procedure; it is not an error or defect in the appreciation of evidence adduced by the parties on the merits. From the above observations of the Supreme Court, it is clear that the power of the Tribunal under section 76 of the Act is a limited one and can be

exercised on any of the grounds mentioned in the three clauses of sub-section (1) thereof"

17. Similarly, in *Dattatraya Yamaji Bhutkar v. Vaijinath Madhav*, (1998) 1 Mah LJ 79 : (1998) 3 Bom CR 286 and *Abdul Rajtak* (supra), this Court has reiterated that the provision under section 76 restricts the power of the Tribunal to reverse findings of facts, except on the grounds enumerated in clauses (a), (b) and (c). It is held that findings of fact on the basis of evidence are to be returned only by the trial Court or by the Appellate Court. The Tribunal under section 76 of the Act has the jurisdiction to examine the findings of fact, if the same are based on no evidence or are found to be perverse. So long as there is some material on record and findings of facts have been arrived at thereon, the Tribunal would have no jurisdiction to upset the concurrent findings of fact.

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23. It is to be noted that the question whether the father of the petitioner was in possession of the land on the Tillers day is a question of fact. Both the authorities below have recorded a finding that the father of the petitioner was in possession of the land on Tillers day and acquired the status of deemed tenant by operation of law. These findings are based on evidence on record and cannot be construed as perverse findings. Consequently, the MRT had no jurisdiction to interfere with the concurrent findings recorded by fact finding authorities even if it was possible to have a different view. As noted above, the scope of revisional jurisdiction is circumscribed by the rigors of section 76 of the Act and as such the Revisional Authority could have interfered with the findings only within the permissible parameters. Evidently, while purporting to exercise revisional jurisdiction, the MRT instead of restricting itself to the three grounds specified in section 76(1) of the Act, acted as a fact finding/Appellate Authority and ventured into re-appreciating the evidence and substituting the finding of fact by its own finding. The MRT has therefore far exceeded the jurisdiction conferred on it by section 76 of the Act. Hence the impugned order cannot be sustained."

15.1. In view of the above well-settled judicial position, it is clear that all that the MRT had to do was to examine whether the order of the Assistant Collector was (a) contrary to law; (b) failed to determine some material issue of law or (c) suffered from substantial defect in following the procedure prescribed by rules under the said Act. However a bare perusal of the decision of the MRT reveals that it has

exceeded its jurisdiction under Section 76 of the said Act by re-appreciating evidence and recording a fact finding on the issue of possession, exemption as well as ownership of the Petitioner while overturning the decisions of the Additional Tahasildar and A.L.T. Panhala and Assistant Collector which is impermissible.

16. In view of my above observations and findings, I find that the order dated 01.01.1998 passed by the MRT overturning the two well reasoned concurrent decisions of the Additional Tahasildar and A.L.T., Panhala and the Assistant Collector calls for interference and deserves to be set aside. Order dated 01.01.1998 passed by the MRT in Revision Application No.58 of 1992 is quashed and set aside.

17. Resultantly order dated 10.07.1990 passed by the Additional Tahasildar and A.L.T., Panhala passed in the 32G proceedings filed by Petitioner and order dated 25.01.1991 passed by the Assistant Collector upholding the earlier order are upheld and confirmed. All rights and contentions of the private Respondent Nos. 1(a) to 1(e) are kept open to the agitated in the appropriate Civil Court as available to them in law.

18. In view of the above observations and findings, Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

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