

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 594 OF 2017

1. Kausalyabai w/o. Ramanlal Ladda .. Petitioners
Age.62 years, Occ.Aгри & Household,
R/o.3-10-65, Court Road, Old Jalna,
Tq. & Dist. Jalna.
2. Mangalbai w/o. Ramprasad Baheti,
Age.60 years, Occ.Aгри & Household,
R/o. Mantri Colony, Subhash Road,
(In front of Temple Datta Mandir)
Bhir, Tq. & Dist.Beed.

Versus

1. Shankar s/o. Khanuji Kothimbire, .. Respondents
Age.Major, Occ.Aгри.,
R/o.Bidkin, Tq.Paithan,
Dist.Aurangabad.

Died – through legal heirs

- (a) Sahabrao s/o. Shanker Kothimbire,
Age.Major, Occ.Aгри.,
R/o.Kothimbire-Galli, House No.188,
Bidkin, Village Bidkin, Tq. Paithan,
Dist.Aurangabad.
- (b) Umaji s/o. Khanuji Kothimbire,
Age.Major, Occ.Aгри.,
R/o.Kothimbire-Galli, Village Bidkin,
Tq.Paithan, Dist. Aurangabad.

- (c) Santosh s/o. Umaji Kothimbire,
Age. Major, Occ. Agri.,
R/o.Kothimbire-Galli, Village Bidkin,
Tq. Paithan, Dist. Aurangabad.
- (d) Aakash s/o. Janardhan Kothimbire,
Age.18 years, Occ. Agri.,
R/o.House No.70 and 71, Bidkin,
Tal.Paithan, Dist. Aurangabad.
- (e) Anusuyabai w/o. Rangnath Jadhav,
Age.48 years, Occ. Household,
R/o.Phulambri, Tal. Phulambri,
Dist.Aurangabad.
- (f) Gayabai @ Pushpa w/o. Rangnath Raut,
Age.30 years, Occ. Household,
R/o.Leha, Tal. Phulambri,
Dist.Aurangabad.

[Resp.No.1(a) to 1(c) added as per
order dated 24.11.2018]

[Resp.No.1(d) to 1(f) added as per
order dated 19.12.2019]

[Resp.No.1(b) & 1(c) deleted as per
order dated 19.12.2019]

- 2. The State of Maharashtra
Through its Secretary,
Revenue Department,
Mantralaya, Bombay.
- 3. Agricultural Lands Tribunal,
Paithan Tahsildar, Paithan,
Dist. Aurangabad.

Mr.D.N.Patki & Ms. Jyoti H. Patki, Advocate for the petitioners.

Mr.R.D.Sanap, AGP for the respondent/State.

Mr.S.S.Gangakhedkar, Advocate for respondent Nos.1(a) and 1(d).

Mr.S.N.Boiwar h/f. Mr.V.B. Garud, Advocate for respondent Nos.1(e) & 1(f).

CORAM : N.J.JAMADAR, J.

RESERVED ON : 03.03.2021

PRONOUNCED ON : 30.03.2021

J U D G M E N T :-

01. Rule. Rule made returnable forthwith and with the consent of learned Counsels for the parties, heard finally at the stage of admission.

02. The petitioners assail an order passed by the Tahsildar/Agricultural Lands Tribunal, Paithan [ALT] dated 05.02.2009 in OW No.2008/Bhusudhar/Kavi, whereby the ALT was persuaded to grant Ownership Certificate in respect of Agricultural Land bearing Gat No.1044 [Old Survey No.564 and 565] admeasuring 9 Acres and 16 Gunthas [suit land] in favour of deceased respondent Shankar

Kanhuji Kothimbire, under the provisions of Section 38-E of the Hyderabad Tenancy and Agricultural Lands Act, 1950 [the Hyderabad Tenancy Act, 1950].

03. The background facts leading to this petition can be stated in brief as under :-

a] Late Champalal s/o. Jagannath was the original holder of the suit land. After his demise in 1348 *Fasli*, Asrabai – his wife, became holder thereof. Her name came to be mutated to the record of rights [*Khasra Patrak*]. The names of Vishwanath Kondaji and Kanhu Tukaram were entered as the protected tenants of the suit land. After the demise of Kanhu Tukaram, the name of Shankar, the deceased respondent came to be entered in the *Khasra Patrak* as the protected tenant of the suit land, in the year 1953. However, Shankar was then a minor.

b] The landlady Asrabai initially executed a general power of attorney in favour of Badrinarayan Totla

on 08.01.1979. Later on, the landlady Asrabai executed a registered gift-deed dated 22nd January, 1979 in favour of Narmadabai w/o. Badrinarayan Totla and gifted the suit land thereunder to the latter. The name of Narmadabai came to be mutated to the suit land vide Mutation Entry No.781. Narmadabai expired on 29.12.2010. The petitioner Nos.1 and 2 are the daughters of Narmadabai and Badrinarayan Totla.

c] The deceased respondent initiated the proceedings before the ALT for grant of ownership certificate under section 38-E of the Hyderabad Tenancy Act, 1950, culminating in the impugned order dated 05.02.2009. The petitioners aver that the ALT did not issue any notice to either the original landlady Asrabai or their deceased mother Narmadabai, nor any enquiry was conducted before granting the certificate under Section 38-E of the Hyderabad Tenancy Act. In any event, without impleading the land owners, the ALT could not have conducted the enquiry and issued the certificate. Even

after the grant of the ownership certificate, no notice or intimation was given to the petitioners. The tenancy under the Hyderabad Tenancy Act, 1958 is not heritable. The deceased respondent was thus not entitled to inherit the alleged protected tenancy. The ALT thus committed a grave error in granting the ownership certificate in complete derogation of the legislative prescription. Since there is no other remedy, the petitioners were constrained to invoke the writ jurisdiction of this Court. Thus, the petitioners have prayed that the impugned order granting the ownership certificate be quashed and set aside and the ownership certificate dated 05.02.2009 issued under Rule 22 of the Hyderabad Tenancy and Agricultural Lands Rules, 1958, be cancelled.

04. The original respondent No.1-Shankar died during the pendency of this petition. The respondent Nos.1(a) to 1(f) came to be impleaded as the legal representatives of deceased respondent No.1.

05. I have heard Mr. Patki, learned Counsel for the petitioners and Mr. Gangakhedkar, learned Counsel for respondent Nos. 1(a) & 1(d), Mr. Boiwar, learned Counsel for respondent Nos. 1(e) & 1(f) and Mr. R.D. Sanap, learned AGP for respondent Nos. 2 and 3.

06. Mr. Patki, learned Counsel for the petitioners made brief submissions. A twofold challenge was mounted by Mr. Patki. One, protected tenancy under the Hyderabad Tenancy Act, 1950 is not heritable in view of the amendment in Section 40 of the Hyderabad Tenancy Act, 1950, as substituted by the Act No. 32 of 1958. Two, the proceeding before the Tribunal for grant of ownership certificate suffered from a serious infirmity in as much as no notice was given to the landlady Asrabai or Narmadabai, the predecessor in title of the petitioners, whose name came to be mutated to the suit land as a donee thereof, under a registered gift-deed. Thus, there was breach of fundamental principles of natural justice. The impugned order is, therefore, legally untenable. In

elaboration of aforesaid submissions Mr.Patki has tendered the notes of arguments and has also placed reliance on a number of judgments, reference to few of those judgments which bear upon the controversy would be made at an appropriate stage here-in-below.

07. Mr. Gangakhedkar, learned Counsel for respondent Nos.1(a) and 1(d), on the other hand, would urge that the petition does not deserve to be entertained. Mr.Gangakhedkar took a slew of exceptions to the tenability of the petition. First and foremost, the petition suffers from gross delay and latches as the petitioners have invoked the writ jurisdiction after about seven years of the impugned order. Secondly, there is an alternate efficacious remedy in the nature of a revision before the Collector under Section 90-B of the Hyderabad Tenancy Act, 1950. Thus, there is no justifiable reason to exercise the extra-ordinary writ jurisdiction. Thirdly, according to Mr.Gangakhedkar, both the grounds on which the impugned order is assailed by

the petitioners are not worthy of consideration. The proceedings for grant of certificate under section 38-E of the Hyderabad Tenancy Act, 1950 do not warrant issuance of notice to the landlord. Thus, there is no scope for grievance of not adhering to the principle of *audi alteram partem*. The other ground of the protected tenancy being not heritable, in the face of the text of Section 40 of the Hyderabad Tenancy Act, 1950, is simply misconceived, urged Mr.Gangakhedkar. The reliance placed on behalf of the petitioners on the judgments of the Supreme Court and this Court to draw home the point that the tenancy, under the Hyderabad Tenancy Act, 1950 is not heritable, is misplaced as those pronouncements were made in the context of altogether different provisions.

08. To begin with, the challenge to the tenability of the petition. An endeavour was made on behalf of the respondents to show that the impugned order is amenable to revision under section 90-B of the Hyderabad Tenancy Act, 1950, if an appeal thereagainst is held not

maintainable under section 90 of the Hyderabad Tenancy Act, 1950. To appreciate this submission, it is necessary to ascertain the nature of the proceedings under section 38-E of the Hyderabad Tenancy Act, 1950.

09. A survey of the provisions of the Hyderabad Tenancy Act, 1950, which bear upon the proceeding under section 38-E of the Act, would assist in comprehending the true nature of the said proceeding. Section 5 of the Act, 1950 declares a person 'deemed to be tenant'. The protected tenants are described in Section 34 of the Act. Section 35 of the Act prescribes a mechanism for adjudication of the claims as to protected tenancy. It, inter alia, provides that if any question arises whether any person, and if so what person, is deemed under section 34 to be a protected tenant in respect of any land, the landholder, or any person claiming to be so deemed, may, within one year from the commencement of the said Act, apply in the prescribed form to the Tahsildar for the decision of the question and the Tahsildar shall,

after enquiring into the claim or claims in the manner prescribed, declare what person is entitled to be deemed to be a protected tenant or, as the case may be, that no person is so entitled. Section 37-A of the Act further provides that persons holding land as tenants on the commencement of the Hyderabad Tenancy and Agricultural Lands (Amendment) Act, 1955, shall be deemed to be protected tenants.

10. Chapter IV-A makes fasciculus of provisions under the title 'Rights of Protected Tenants, Ordinary Tenants and Landholders'. Section 38 therein deals with the rights of the protected tenants to purchase land. Section 38A(1) empowers the Tribunal to determine encumbrances subsisting on the land purchased by the tenant. Section 38 deals with the procedure to be followed for that purpose. Section 38-E, with which we are primarily concerned, provides for transfer of ownership of lands held by the protected tenants in their favour from the notified date; whereas Section 38-F

provides for transfer of ownership of land to the tenants, deemed to be protected tenants under section 37-A.

11. Section 38-E, inter alia, provides that notwithstanding anything in said Chapter or any law for the time being in force or any custom, usage, decree, contract or grant to the contrary, the Government may by notification in the official gazette declare in respect of any area and from such date as may be specified therein that ownership of lands held by protected tenants, which they are entitled to purchase from their landholders, in such area, under any of the provisions of Chapter IV-A, shall stand transferred to such protected tenants and from such date all such protected tenants shall be deemed to be the full owners of such lands. Sub-section (2) of Section 38-E thereafter provides that a certificate in the prescribed form declaring the protected tenant to be owner shall be issued by the Tribunal. Such certificate shall be a conclusive

evidence of the protected tenant having become the owner of the land with effect from the date of the certificate as against the landholder and all other persons having any interest therein.

12. From a conjoint reading of aforesaid provisions, it becomes evident that the Hyderabad Tenancy Act, 1950 vests ownership of the land in a protected tenant by engrafting a legal fiction. The ownership is conferred by the statutory provisions. It emanates from the status of being a protected tenant. In a sense, the grant of certificate, under Section 38-E, is a formal declaration that the protected tenant by virtue of the provisions of the Act has become owner of the land he cultivates. It does not partake the character of an order in the strict sense.

13. In this context, reliance placed by Mr. Patki on a judgment of this Court in the case of **Bharatlal Hemraj Vs. Kondiba Govinda Jadhav & Others, 2002 (Supp.1)**

Bom.C.R.216, wherein the very question of tenability of an appeal against grant of certificate under section 38-E of the Act, 1950, fell for consideration, appears to be well founded. After an elaborate analysis of the provisions of the Act, 1950, this Court held that a certificate is merely affirmative expression of conferment of ownership upon the person holding a land and already declared or confirmed as the protected tenant under the provisions of said law. Such a declaration is not a decision or order within the meaning of said expression under section 90 of the Act, 1950. Thus, no appeal is maintainable against an order granting such certificate.

14. The observations of this Court in para 16 are material and thus extracted below :-

"16. Yet another point to be considered in relation to Section 38E is that such declaration is not a decision or order within the meaning of the said expression under Section 90 of the said Act. Section 90 of the said Act, as already stated above, clearly speaks of "order" and not merely a declaration in the form of certificate to be issued in favour of the protected tenant. As already seen above, the ownership certificate under Section 38E is to be issued in the Form XVI which is a certificate conferring ownership of the land in

favour of a protected tenant. It is a formal certificate issued declaring a protected tenant in relation to the property held by him to be the owner thereof. There is no decision or adjudication of rival contentions of the parties at the time of issuance of such certificate. In that regard it cannot be said to be a decision as such nor it can be termed as "order" within the meaning of said expression under Section 90. A decision does not mean mere conclusion but it embraces within its fold the reasons forming basis for arriving at "conclusion" as has been held by the Apex Court in Mukhtiar Singh and another vs. State of Punjab reported in 1995 (5) SCC 760 = AIR 1995 SC 686. The authority issuing certificate under Section 38E does not pass any order as such, and therefore, there is no question challenging the said certificate by way of appeal under Section 90. A certificate is merely affirmative expression of confirmation of ownership upon the person holding a land and already declared or confirmed as the protected tenant under the provisions of the said law. Once it is clear that the appeal itself was not maintainable under section 90 against the certificate issued under section 38-E, the point as to whether the petitioner acquired knowledge about the declaration under section 38-E in 1979 for the first time became redundant for the decision in appeal preferred by the petitioner. The challenge on the first two grounds therefore is totally devoid of substance. Neither declaration made under section 38-E is bad for want of individual notice either to the petitioner or to his father or mother, nor the appeal filed by the petitioner was maintainable under section 90 of the said Act."

15. In view of aforesaid enunciation of the legal position, the submission sought to be canvassed by Mr. Gangakhedkar that, if not an appeal, a revision under section 90-B would definitely lie, deserves to be repelled for the same reasons. Section 90-B provides for exercise of revisional jurisdiction, by the specified authorities, where no appeal has been filed within the period stipulated for appeal. The test of appealability

of the order or decision thus applies with equal force to the revisability thereof. I am, therefore, not persuaded to agree with the submission on behalf of the respondents that the petitioners have an equally efficacious statutory remedy.

16. The aspect of delay and latches, in the circumstances of the case, does not seem to be an impediment in entertaining the petition. It is the case of the respondents that the nature of proceeding does not warrant issue of notice to the landholders before grant of certificate of ownership. In this view of the matter, the claim of the petitioners that they were unaware of the impugned order, whereby ownership certificate came to be issued in favour of deceased respondent, cannot be said to be unsustainable.

17. Having dealt with the barnacles attached to the hull of the controversy, I now revert to the twin submissions advanced on behalf of the petitioners. Mr.

Patki, learned Counsel for the petitioners, urged with a degree of vehemence, that the protected tenancy under the Act, 1950 is not heritable, especially after the substitution of section 40 of the Act, 1950, by the amending Act No.32 of 1958.

18. In order to appreciate the aforesaid submission, in a proper perspective, it may be expedient to extract sub-section (1) of Section 40, which reads as under :-

“40. (1) Where a tenant dies, the landholder shall be deemed to have continued the tenancy -
(a) If such tenant was a member of an undivided Hindu family, to the surviving members of the said family, and
(b) If such tenant was not a member of an undivided Hindu family, to his heirs, on the same terms and conditions on which such tenant was holding it at the time of his death.”

19. On a plain reading of the aforesaid provisions, I find it rather difficult to accede to the submission on behalf of the petitioners that heritability of the tenancy under the Act of 1950 is restricted. On the contrary, the phrase ‘landholder shall be deemed to have continued the tenancy’ would suggest that the objective of heritability of the tenancy was sought to be secured

by a deeming provision. The contrast becomes clear and explicit, if the phraseology of section 40(1), before it suffered amendment in the year 1958, is noted. Sub-section (1) of Section 40, as it stood then, read as under :-

“40.(1) All rights of a protected tenant shall be heritable.”

20. It becomes abundantly clear, under the old provisions, there was a mere declaration that all the rights of the protected tenants shall be heritable; whereas, under the extant provisions, by a deeming fiction, the landholder shall be deemed to have continued the tenancy.

21. The learned Counsel for the petitioners placed a very strong reliance on a judgment of the Supreme Court in the case of Vithal Dattatraya Kulkarni and Others Vs. Shamrao Tukaram Powar and Ors., AIR 1979 SC 1121, to bolster up the submission based on non-heritability of the protected tenancy. Since the aforesaid ruling has

been relied upon as the foundation of the petitioners' claim, it would be necessary to consider the factual backdrop in which the said judgment came to be pronounced.

22. In the case of **Vithal (Supra)** the question which arose for consideration before the Supreme Court was framed by the Supreme Court in the following words :-

"6. The question for consideration is whether the heirs of a tenant whose tenancy was terminated by the landlord on the ground that he required the land for his personal cultivation were entitled to exercise the right which the tenant would have, if alive, to obtain possession of the land if the landlord ceased to cultivate the land at any time within twelve years after he obtained possession; in other words, whether the right of the tenant to have the possession of the land restored on the failure of the landlord to cultivate the land personally at any time during the twelve years subsequent to his obtaining possession, was a heritable right.? xxxxxxxx"

[emphasis supplied]

23. In the context of the amendment in Section 40 of the Bombay Tenancy and Agricultural Lands Act, 1948, the Supreme Court held that the only reasonable conclusion, therefore, is that under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948, as it stood before it was amended in 1956, the right of a tenant to

recover possession of land from a landlord who had obtained possession of such land on the ground that he required it to cultivate it personally was not a heritable right.

24. Evidently, the question that arose for consideration in the aforesaid case was restricted to the heritability of a right of the tenant to recover possession of land from a landlord who had obtained possession of such land on the ground of personal cultivation and did not cultivate the same within the period of 12 years. Evidently, this pronouncement is of no assistance to the petitioners in their endeavour to draw home the point that the tenancy itself is not heritable under the Act, 1950. This position becomes abundantly clear, if the following observations of the Supreme Court, in para No.8 of the aforesaid judgment are considered, whereby the Supreme Court made explicit effort to dispel the misgivings about the import of the said judgment, as under :

"8. xxxxxxxx Our conclusion regarding the non-heritability of this right rests solely on our understanding of S.40 of the Bombay Tenancy and Agricultural Lands Act as it stood before it was amended in 1956, in relation to the right under Section 37. Nothing that we have said should be understood as indicating that any other right of a tenant or this very right after the 1956 amendment is not heritable."

[emphasis supplied]

25. As a second limb of the submission, the learned Counsel for the petitioners would urge that the tenancy under section 54 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 is held to be non-heritable. The said provision is *pari-materia* with Section 40 of the Hyderabad Tenancy Act, 1950. Therefore, the deceased respondent could not have inherited the tenancy after the demise of his father Khanu Tukaram. In order to lend support to this submission, a strong reliance was placed on the judgments of the supreme Court in the cases of Shriram Mandir Sansthan Vs. Vatsalabai and Others (1999) 1 SCC 657, Sarda Education Trust Vs. Nandulal Vishwanath Tate & Ors., 2000 (1) Mh.L.J.1 and Panpoi Dharmal Sansthan Vs. Bhagwant and Ors., 2000(2) Mh.L.J.719.

26. In all fairness to the learned Counsel for the petitioners, the reliance on the aforesaid judgments is completely misplaced. In the case of **Shriram Mandir Sansthan (Supra)**, the question which arose before the Supreme Court was whether in case of lands belonging to a trust or an educational institution falling under section 129(b) of the Tenancy (Vidharbh Region) Act, 1958, the tenancy is heritable on death of a tenant by his heirs. The Supreme Court, after adverting to the provisions of Section 54 and Section 129 of the said Act and the pronouncement of the Full Bench of this Court in the case of **Khanqah Kadria Trust Vs. Shevantabai, 1989 Mh.L.J.891**, wherein it was held that though Section 54 would not apply, the ordinary law relating to succession would apply and, therefore, tenancy of land belonging to such trusts for an educational purpose or institutions for public religious worship would also be heritable, did not agree with the Full Bench judgment and held that such tenancy was not heritable.

27. The observations of the Supreme Court in para No.13 are instructive and thus extracted below :-

"13. The High Court was, therefore, not right when it held that although Section 54 is excluded, the ordinary law of succession and inheritance is not. And, therefore, the tenancy of lands belonging the institutions covered by Section 129(b) would be heritable under the ordinary law if not under Section 54. In fact, the Bombay High Court from 1958 to 1980 had consistently held the view that the tenancy of a public trust was not heritable. But in 1980 the High Court held that Section 40 of the Bombay Tenancy and Agricultural Lands Act was not the only source of inheritance and as such the tenancy of a public trust was heritable under that Act. The present Section 54 is the relevant section as far as lands in the Vidarbha Region are concerned. The Full Bench upheld the view taken in 1980. In our view, the exclusion of Section 54 by necessary implication also excludes the provisions of ordinary law of succession and inheritance from the tenancy of agricultural lands of institutions falling under Section 129(b). Section 129 clearly seeks to protect certain lands from the provisions of the tenancy Act of 1958. The section thus protects lands held or leased by a local authority or a university, lands which are the property of a trust for an educational purpose, hospital, panjarpole, Gaushala or an institution for public religious worship, provided the entire income of such land is appropriated for the purposes of such trust. It also protects lands assigned or donated by any person before the commencement of the said Act for the purpose of rendering services useful to the community, namely, maintenance of water works, lighting or filling of water troughs for cattle. It also protects any land taken under management by a civil, revenue or criminal court as set out therein. There is a further safeguard ensuring that the income from such lands is appropriated for the purposes of a trust covered by Section 129(b). The explanation provides for the grant of a certificate by the collector after holding an inquiry. Thus, the clear intention of Section 129 is to protect certain lands from tenancy legislation where the lands or income from such lands is being utilised for public purposes set out there. In this context, if the tenancy of such lands is not made heritable, this would clearly be in furtherance of the purpose of exempting such lands under Section 129."

28. The aforesaid pronouncement underscores that in

view of the provisions contained in Section 129 of the Tenancy (Vidharbh Region) Act, 1958, certain lands are protected from the tenancy legislation, where the land or income from such land is being utilized for public purposes, set out therein. The pronouncement was in a totally different context and would not govern the issue of heritability of a tenancy, like the case at hand, even remotely. The subsequent pronouncements in the case of Sarda Education Trust (Supra) and Panpoi Dharmal Sansthan (Supra) are based on the judgment in the case of Shriram Mandir Sansthan (Supra) and thus do not advance the cause of the submissions on behalf of the petitioners.

29. It would be suffice to note that under the amended provisions of Section 40 of the Hyderabad Tenancy Act, 1950, extracted above, heirs of deceased tenants are automatically deemed to succeed to tenancy. Before the said substitution, there was no such deeming provision. The principle of heritability of tenancy under section 40 of the Hyderabad Tenancy Act, 1950, as amended in 1958,

is on the contrary, fortified by a deeming provision. Thus, the challenge to the heritability of protected tenancy by the respondent does not merit countenance.

30. This propels me to submission based on non-observance of the principles of natural justice while granting the ownership certificate. In the impugned order the ALT has recorded that the respondent had tendered the record of rights of the suit land indicating cultivation thereof since the year 1958. The orders passed by the Collector, Land Reforms, and the Maharashtra Revenue Tribunal upholding the tenancy claim were also pressed into service. The notices were issued to the concerned parties. The material on record, according to ALT, indicated that the respondent had been in cultivation of the suit land as a protected tenant thereof since 1953 and entries to that effect found place in the revenue record. The respondent had also deposited the requisite amount pursuant to the order of the Tribunal. Thus, the respondent was entitled to the grant

of the ownership certificate.

31. The petitioners asserted that no notice was given either to Narmadabai, their predecessor in title or Asrabai, the original landholder. Resultantly, the proceeding is vitiated. The question as to whether the notices were, in-fact, issued and served need not be delved into. Whether such notice is warranted by law?.

32. In the very pronouncement in the case of **Bharatlal Vs. Kondiba (Supra)**, on which reliance was placed by both the petitioners and respondents, it was held that issuance of notice to the landholder before grant of certificate under section 38-E of the Act, 1950 was not peremptory.

33. The observations in para No.15 are material and thus extracted below :-

“15. The ownership of land in a protected tenant is created by virtue of provisions of Section 38E. The well established principle of law is that when a statute creates a legal fiction saying that something shall be deemed to have resulted

from the facts established in a particular circumstance then full effect has to be given to the legal fiction created by the statute. In this regard one can certainly refer to the decisions of the Apex Court in the matter of Harish Tandon v. Additional District Magistrate Allahabad U.P. and others reported in 1995 (1) SCC 537 = AIR 1995 SC 676 and in the matter of Orient Paper and Industries Limited and another v. State of Orissa and others reported in 1991 Suppl. (1) SCC 81 = AIR 1991 SC 672 in Section 38E of the Act there is no provision for individual notice before issuing declaration of ownership of land in favour of the protected tenant. So also is the case of Rule 23. But the fact remains that such declaration is a protection given to certain persons called as the protected tenants under Section 38E of the said Act. Certainly the said status of tenancy is subject to right to challenge by the landowner in terms of Section 35 and 37-A. As already stated above, any person interested in disputing the right of another person interested in disputing the right of another person as that of a tenant, is required to file a necessary application in that regard to the authority specified under the law, who upon holding necessary enquiries in the matter, has to decide the controversy and thereupon prepare a list of persons who can be considered as the protected tenants or the tenants deemed to be protected as the case may be. The matter does not end with such enquiries. Before proceeding to make declaration under Section 38E, there is yet another enquiry under Section 38A-1 regarding subsisting encumbrances over the lands which are to be subject to declaration under Section 38E. A public notice of such notification is required to be issued as per rule 17. In other words, the landowners are given ample opportunities to dispute the right of a person claiming to be the protected tenant or deemed protected tenant and only after detailed enquiry the landholder i.e. the protected tenant or deemed protected tenant becomes the deemed owner. That being so, there is no need of any individual notice to be issued at the time of issuance of declaration of ownership in favour of the protected tenant of the land held by him. In fact, reading down the need for any other procedure for issuance of the declaration under Section 38E would be absurd and would nullify and defeat the very object of the said Act. The said Act and more particularly the relevant provision is a beneficial legislation in favour of the protected tenant and has to be construed accordingly bearing in mind the intention of the Legislature. Besides, before finalising the list of deemed owners under Section 38E, there is inquiry held in terms of Rule 23 of the said Rules, but there is no scope for individual notices."

[emphasis supplied]

34. This Court has, after adverting to the governing provisions, observed in no uncertain terms that there is no need of any notice to be given at the time of declaration of ownership in favour of the protected tenant of the land held by him. The Court went on to observe that insisting on the issue of notice before declaration under section 38-E of the Act would nullify and defeat the very object of the said Act. There are remedies available under the provisions of the Act, 1958 to the landholder.

35. In the light of the aforesaid pronouncement, the challenge to the impugned order on the score of breach of principles of natural justice also does not merit countenance. Even otherwise, the petitioners themselves have approached the Court with a case that the predecessor in title of the respondent Khanuji Tukaram was the protected tenant of the suit-land and that the name of deceased respondent came to be shown in the record of right of the suit-land as a protected tenant in

the year 1953 itself. In the circumstances, the grant of certificate under Section 38-E of the Act is nothing but a formal declaration of ownership conferred on the undisputed protected tenant by virtue of the provisions of the Act, 1950. To sum up, what the petitioners were required to assail was the status of the deceased respondent as the protected tenant of the suit land by resorting to provisions of the Hyderabad Tenancy Act, 1950 and within the timeframe stipulated thereunder. A mere challenge to the grant of certificate of ownership is of no avail to the petitioners. Resultantly, the petition fails.

36. Hence, the following order :-

The petition stands dismissed.

No costs.

Rule discharged.

[N.J.JAMADAR,J.]