

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

917 WRIT PETITION NO. 8728 OF 2018

LATABAI WAMANRAO KALE & OTHERS
VERSUS
THE STATE OF MAHARASHTRA & OTHERS

...

Advocate for the petitioners : Mr.S.S.Gangakhedkar
AGP for Respondent-State : Mr.S.P.Tiwari
Advocate for Respondent nos.3A to 3F :
Mr.V.V.Bhavthankar

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WITH

917 WRIT PETITION NO.4008 OF 2019

MAROTI ROHIDAS KALE & OTHERS
VERSUS
THE STATE OF MAHARASHTRA & OTHERS

...

Advocate for the petitioners : Mr.S.S.Gangakhedkar
AGP for Respondent-State : Mr.S.P.Tiwari
Advocate for Respondent nos.3A to 3D :
Mr.V.V.Bhavthankar

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CORAM : ARUN R. PEDNEKER, J.

DATE : 27.01.2023

P.C. :

1] Heard. The learned counsel for the petitioners submits that in view of the judgment passed by this Court in the case of **Bharatlal s/o. Hemraj Vs. Kondiba Govinda Jadhav and others** reported in **2001 (3) Mh.L.J.**, wherein it

has been held that the declaration under Section 38E is not a decision or order within the meaning of Section 90 of the Hyderabad Tenancy and Agricultural Lands Act, 1950. The learned counsel, therefore, submits that, no appeal lies against the order passed under Section 38-E of the Hyderabad Tenancy and Agricultural Lands Act, 1950, and as such, the appellate proceedings arising out of the order passed under Section 38-E of the Act, 1950 does not survive. The learned counsel further submits that the impugned order passed in the proceeding challenging the certificate under Section 38-E of the said Act, be quashed and set aside.

2] The learned counsel for the respondent no.3 submits that the order passed / certificate issued under Section 38E of the said Act is without declaration of the tenancy that the petitioners were protected tenant under Section 35 of the Tenancy Act, and as such, the certificate under Section 38-E of the said Act is without any enquiry as contemplated under the said Act.

3] In view of the settled legal position that no appeal under Section 90 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 is maintainable against certificate issued under Section 38-E of the said Act, the respondent no.3 would be at liberty to take such appropriate proceedings to challenge the certificate issued under Section 38-E and further consequential orders before appropriate authority, in accordance with law.

4] In view of the same, the impugned order dated 25.06.2018 passed by the respondent no.1 – the Deputy Collector, HIngoli under Section 90 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 is quashed and set aside. Accordingly, both the Writ Petitions are disposed of.

[ARUN R. PEDNEKER]
JUDGE

DDC