

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

44 WRIT PETITION NO.10249 OF 2014
WITH WP/1790/2019

SHAIKH ANWAR ABDUL AZIZ AND ANOTHER
VERSUS
SONAJI RAOJI DIED LRS. MAROTI SONAJI AND OTHERS

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Advocate for Petitioners : Mr. Pravin Mandlik, Sr. Adv. i/b. Mr. Mr.
A.S.Gandhi

AGP for Respondents 6 to 9 : Mrs. R.P. Gaur

Advocate for Respondents 2 to 5 : Mr. Sanket Kulkarni a/w. Govind Ingole
h/f. Mr. S.K. Adkine

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CORAM : ARUN R. PEDNEKER, J.
DATED : 03/10/2023

PER COURT :

1. Heard the learned counsel for the respective parties.
2. Brief facts, giving rise to the present writ petitions, can be summarized as under :-

The declaration was made under section 38-E of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (in short 'the Act') in favour of the protected tenant Mr. Sonaji Raoji in respect of land Survey No. 82 of village Vishnupuri, Taluka Nanded to the extent of 7 Acres and 32 Guntas as being deemed owner of the agricultural lands. The land owners Mr. Mohammad Nawaz, Mr. Mohammad Gous and Mr. Mohammad Aziz had challenged the declaration made under section 38-E in favour of Mr. Sonaji Raoji in the year 1959 before the appellate authority. The declaration was confirmed by the appellate authority. However, the revisional authority Maharashtra Revenue Tribunal, Aurangabad partly allowed the revision of the above land owners and remanded the matter back to the Tahsildar.

3. On remand, the Tahsildar held that Mr. Mohammad Nawaz and other family members had partitioned the property before the notified date under the Act of 1950 the individual family members had become individual owners of the agricultural land held by two families and as such Mr. Mohammad Nawaz was holding land less than the two family holdings and consequently certificate under section 38-E is erroneously granted. Aggrieved by the order of the Tahsildar , the appeal was preferred by Mr. Sonaji Raoji. In the appeal, the Deputy Collector held that on the notified date for declaration of ownership under section 38-E, the agricultural property was not partitioned by metes and bounds between Mr. Mohammad Nawaz and his brothers and therefore, the entire property was held by them constituted one unit and therefore, the declaration under section 38-E made in favour of Mr. Sonaji is correct and set aside the order passed by the Tahsildar. The order passed by the Deputy Collector was challenged before the Maharashtra Administrative Tribunal (M.R.T.). The M.R.T. by order dated 23rd April 1973 confirmed the order passed by the Deputy Collector and held that there was no partition and the declaration was rightly granted under section 38-E of the Act of 1950 in favour of Mr. Sonaji. This order of Tribunal has attended finality.

4. In Writ Petition No. 1790/2019, the legal heirs of Mr. Mohammad Gous and Mr. Abdul Aziz have challenged the order passed by the Tribunal dated 23rd April, 1973 and there is huge delay in filing appeal against the said order i.e. the order passed by the Tribunal is challenged by petitioners after a period of 45 years.

5. The learned counsel appearing for the petitioners submits that to challenge declaration under section 38-E of the Act, there is no period of limitation. He further relies on the judgment of this Court in the case of **Bharatlal s/o. Hemraj Vs. Kondiba Govinda Jadhav and Ors. reported in 2001 (3) Mh.L.J. 380** to contend that declaration granted under section 38-E is not the decision or order within the meaning of section 90 of the Act of 1950 and as such, there is no appeal provided. He further submits that since it is not the decision of the Court, he can challenge the same anytime as there is no limitation prescribed.

6. It is to be noted that original declaration is granted in the year 1959 and even if the contention of the petitioners is accepted, then they are not entitled to challenge the same before this Court after the period of more than 50 years and that declaration of 1959 cannot be reopened before any Court after huge delay. Be that as it may. The order passed by the Tribunal in the year 1973 has attended finality and it is challenged after the period of 45 years in this Court. The delay is huge and it is difficult for me to accept the submissions that the order passed by the Tribunal can be assailed after 45 years. In view of the same, Writ Petition No. 1790/2019 is dismissed.

7. Coming to the next Writ Petition No. 10249/2014, it appears that the petitioners are the grand children Mr. Mohammad Gous and Mr. Mohammad Aziz, who were appellants before the Tribunal in the earlier round and have challenged the grant of 38-E certificate in favour of Mr. Sonaji Raoji in the year 1959. The order passed by the Tribunal in the year 1973, having attended finality, the certificate granted under section 38-E is binding on

the grand children of Mr. Mohammad Gous and Mr. Mohammad Aziz i.e. the petitioners herein.

8. The learned counsel for the petitioners submits that they had no knowledge about the earlier proceedings initiated by their grandfathers and as such, they initiated the present proceedings. Be that as it may. The order passed by the Tribunal in favour of Mr. Mohammad Nawaz and Mr. Mohammad Gous is binding upon the grand children as they are claiming the title to agricultural land through their grandfather. Their right to the agricultural property exists only through Mr. Mohammad Nawaz and Mr. Mohammad Gous. The certificate granted in the year 1959 cannot be reopened by a fresh writ petition after a period of 50 years in subsequent proceedings. In view of the same, Writ Petition No. 10249/2014 is also dismissed.

[ARUN R. PEDNEKER J.]

ssc/