

---

**(2000) 10 BOM CK 0044**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 486 of 1983**

Bharatlal

APPELLANT

Vs

Kondiba Govinda Jadhav and others

RESPONDENT

---

**Date of Decision :** 19-10-2000

**Acts Referred:**

**Citation :** (2000) 10 BOM CK 0044

**Hon'ble Judges :** R.M.S. Khandeparkar, J

**Bench :** Single Bench

**Advocate :** R.R. Jethlia, for the Appellant; A.H. Vaishnav for Respondents Nos. 1 to 4, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

R.M.S. Khandeparkar, J.—The petition arises from the orders passed by the authorities below refusing to condone the delay of about 20 years in filing an appeal u/s 90 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as "the said Act") against the declaration issued u/s 38E of the said Act in favour of the Respondents in relation to the properties bearing Sy. No. 45/AA and 75 situated in the village of Idoli, Taluka Hingoli.

2. The case of the Petitioner is that the declaration of ownership of the suit property in favour of the Respondent was made on 12-1-1959 without issuing any notice to the Petitioner or his father or mother and without hearing them and, therefore, the said declaration being in violation of principles of natural justice, the same is bad in law and void ab initio. The father of the Petitioner expired in the year 1961 and at that time the Petitioner was minor in age. The Petitioner challenged the said declaration of ownership in favour of the Respondents in respect of the suit property by way of appeal u/s 90 before the Deputy Collector. The same was filed on 21st July 1979. It is the case of the Petitioner that he had no knowledge of the said declaration till then. It was sought to be contended before the Deputy Collector that the Respondents were not tenants in respect of the suit property and that they had refused to purchase

the land and accordingly files were closed in 1961 after due verification. It was also contended that after the death of father of the Petitioner, the proceedings for possession of the suit property came to be initiated by the Respondents in the year 1962 but the same were not about the declaration of the ownership. The appeal having been filed after 20 years without sufficient cause for delay being shown, the same was rejected by the Deputy Collector. The revision application preferred against the same was also dismissed by the Maharashtra Revenue Tribunal Aurangabad. Hence, the present petition.

3. Shri R. R. Jethlia, the learned advocate appearing for the Petitioner, relying upon notes of High Court Rulings reported in Tenancy Law Reporter Vol. XV (1967) in relation to Special Civil Application No. 1209 of 1963 in a case between Saheba s/o Govind v. Pandurang and Special Civil Application No. 2068 of 1963 decided on 10-12-1964 in a case between Rangrao Ramrao v. Sopanrao as well as 1965 Mh. L.J. 96 in relation to Special Civil Application No. 1530 of 1963 decided on 14-10-1964 in a case of Bhagwan v. Waranga submitted that the proceedings in relation to declaration of ownership of rights in favour of the Respondent in the suit properties having been conducted without issuing any notice to the Petitioner or his father or mother, who are admittedly the landlords of the said suit properties, the entire proceedings as well as the order passed therein are bad in law and the same having been challenged moment it came to the knowledge of the Petitioner, the authorities below have acted illegally in dismissing the appeal without deciding the case of the Petitioner on merits and rejecting the same merely on the ground of delay. It was further submitted by the learned advocate that the delay was sufficiently explained as there was nothing on record to show that the Petitioner had knowledge about the order of declaration prior to July 1979. The finding that the Petitioner had knowledge about the said order at least on 19-6-1962 based on the record in other proceedings is not borne from the record inasmuch as those proceedings were for restoration of possession of land and had nothing to do with the issue of declaration of ownership u/s 38E of the said Act.

4. Shri A. H. Vaishnav, the learned advocate appearing for the Respondents, on the other hand, has submitted that considering the fact that the Petitioner and his mother were fully aware of the declaration of ownership at least from 1962 i.e. from the time of pendency of the proceedings for restoration of possession of the suit property filed by the Respondents and there being no explanation as to what prevented the Petitioner from filing the appeal in 1962 or at any time thereafter prior to 1979, there is no scope for contending the impugned order to be arbitrary or illegal. Drawing attention to the interim order passed in this petition as well as in Misc. Civil Application Nos. 305/1993 and 308/1993 the learned advocate submitted that the conduct of the Petitioner had been that of a cantankerous landlord. He further submitted that in spite of pendency of this petition, the Petitioner has alienated the suit property in favour of subsequently added Respondents and that too without even bringing the said fact to the notice of this Court.

5. Upon hearing the learned advocates for the parties and on perusal of the records it is clear that the grievance of the Petitioner in the petition is three fold. Firstly, the order u/s 38E of the said Act was passed without notice to the Petitioner or his father or mother and, therefore, the proceedings and the order are bad in law. Secondly in view of the fact that the Petitioner for the first time learnt about the said order in July 1979, the appeal was in time and the delay, if any, was well explained and thirdly that the Respondents were neither protected tenants nor cultivated the land in that capacity and, therefore, were not entitled for declaration of ownership u/s 38E of the said Act. Considering the nature of controversy and the grievances made by the Petitioner in the petition, before arriving at any conclusion, it would be necessary to scan through the relevant provisions of law.

6. The said Act has been enacted to regulate the relations of land holders and tenants of agricultural land and the alienation of such lands and the same is apparent from the preamble to the said Act. The expression "protected tenant", according to Section 2(R) of the said Act, means a person who is deemed to be a protected tenant under the provisions of Sections 34 to 37A. According to Section 34, a person holding a land continuously and cultivating the same personally for a period of not less than six years immediately preceding 1-1-1945 is deemed to be a protected tenant. Section 35 provides for a decision by Tahsildar on any dispute as to whether a person is a deemed to be a protected tenant or not. However, for that purpose the landlord or a person interested in dispute was required to make an application within one year from the commencement of the said Act.

7. Chapter IV-A of the said Act deals with the provisions pertaining to rights of protected tenants, ordinary tenants and landholders. Section 38 therein deals with the rights of protected tenant to purchase land. Section 38A-I empowers the Tribunal to determine encumbrances subsisting on land purchased by tenant u/s 38 and deals with the procedure to be followed in that regard. Section 38E provides for transfer of ownership of land held by the protected tenant in his favour from the notified date. Section 38F provides for transfer of ownership of land to the tenants deemed to be protected tenants u/s 37A. Section 38G is in relation to transfer of ownership of land to the tenant from notified date.

8. The provisions relating to the appeal in respect of the orders passed under the said Act are contained in Section 90 of the said Act and it provides that from every order other than an interim order passed by the Tahsildar under the said Act, an appeal shall lie to the Collector and the orders of the Collector on such appeal shall be final. According to Section 90(2), from every original order other than an interim order passed by the Collector an appeal shall lie to the Tribunal and on such appeal order of the Tribunal shall be final. Section 93 provides for limitation period of 60 days for appeal as well as for revision and for applicability of the provisions of the Limitation Act to the proceedings under the said Act.

9. Section 38E, which is very relevant section for the decision in the matter,

provides that notwithstanding anything in this 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 all lands held by protected tenants which they are entitled to purchase from their landholders in such area under any provisions of this Chapter shall stand transferred to and vest in the protected tenants holding them and from such date the protected tenants shall be deemed to be the full owners of such lands. After Explanation clause to the said section, Sub-section (2) of Section 38E provides that a certificate in the prescribed form declaring him to be owner shall be issued by the Tribunal to every such protected tenant and notice of such issue shall simultaneously be issued to the landholder. Such certificate shall be 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.

10. Section 97 of the said Act empowers the Government to make rules for carrying out the purpose of the said Act and Sub-section (5) thereof requires that such rules should be placed before the State Legislature and on its approval to publish the same in the official gazette. The rules so framed are "the Hyderabad Tenancy and Agricultural Lands Rules 1958 (hereinafter referred to as "the said rules")- Rule 14 deals with the procedure to be followed for determination of rights of the protected tenants u/s 37A and it provides for the publication of provisional list of the tenant with all the necessary details regarding tenancy and the land which are the subject matter of the tenancy as well as for the publication of final lists of the tenants after due inquiries. Both lists are required to be given wide publicity by affixing copies thereof on the notice board of village Chavdi as well as by beat of drum in the village. Further the authorities are required to cause mutation entries to be made in the Record of Rights in respect of the rights of the tenants deemed to be protected tenants. Rule 17 deals with the manner of publication of notice calling upon holders of encumbrances to notify their claims. Rule 21 speaks about the manner of deciding questions arising in respect of purchase of land by tenant. Rule 22 is regarding certificate of purchase by the Tribunal to the tenant and it provides that certificates to be issued by the Tribunal shall be in Form XIII when the reasonable price is determined by the Tribunal or agreed to by the landholder and the tenant and in Form XIV when the landholder agrees to relinquish his rights in favour of the tenant u/s 38B.

11. Rule 23 deals with the procedure to be followed in the matter of transfer of ownership to the tenants. It provided that after the issue of a notification u/s 38E or Section 38F, the Tribunal shall cause summary enquiries to be made in respect of land held by the tenants deemed to be protected tenants u/s 37A and their landholders and shall prepare a list in Form XV of such protected tenants and the description of the land or portion thereof, of which each of such protected tenant is deemed to be the full owner u/s 38F or Section 38E as the case may be. The

list so prepared has to be published by affixing a copy thereof to the notice board of the village Chavdi and the Tribunal shall thereupon fix a date for hearing objections if any to the provisional lists and give publicity to the date so fixed by beat of drum in the village. Upon hearing of objections the Tribunal shall make summary enquiries and declare the provisional list with or without modification, as a final list and affix a copy thereof on the notice board of the village Chavdi and shall give publicity to such declaration in the village by beat of drum. After declaration of final list under Sub-rule (3) of Rule 23, as above, the Tribunal has to issue a certificate in Form XVI to each of the protected tenants included in the said lists, declaring him to be the full owner of the land mentioned in the list. Though Rule 23(1) speaks about the notification u/s 38F alone, Sub-rule (8) of Rule 23 clearly provides that the provisions contained in the said rule shall mutatis mutandis apply to the transfer of ownership of land under Sections 38E and 38G. Form XV prescribed under Rule 23(1) read with Rule 23(8) of the said rules is regarding list of tenants to whom ownership of land is to be issued u/s 38E or Section 38G of the said Act. Form XVI issued under Rule 23(4) read with Rule 23(8) of the said rules is regarding certificate of ownership u/s 38E or Section 38G of the said Act.

12. On plain reading of Section 38E it is apparent that it primarily speaks of issuance of notification to be published by the Government declaring the area and the date from which ownership of all the lands in such area would stand transferred and vest in the protected tenant holding them under the provisions of the said Act and consequently about deemed ownership of such holdings in favour of the protected tenant so declared. The said Section 38E(1) does not speak of any enquiry, either in detail or summary, regarding the declaration of ownership of the protected tenant in relation to the lands held by them. The said provision of law does not provide for any individual notice to the landowner or any other person including protected tenant before issuance of such declaration of ownership. This may at first sight appear to be in violation of principles of natural justice. Indeed the Petitioner in the body of the petition has made a statement in that regard pertaining to the rules which do not provide for individual notices to the landowners and therefore being bad in law; however, neither there is any challenge to the rules nor any relief is sought for in that regard in the Petitioner nor the learned advocate for the Petitioner has advanced any argument in that regard. And rightly so.

13. The Apex Court has ruled in *The Maharashtra State Financial Corporation Vs. M/s. Suvarna Board Mills and another*, that the natural justice cannot be placed in a strait-jacket. Its rules are not embodied and they do vary from case to case and from one fact-situation to another. All that has to be seen is that no adverse civil consequences are allowed to ensue before one is put on notice that the consequence would follow if he would not take care of the lapse, because of which the action as made known is contemplated. No particular form of notice is the demand of law. "Theory of reasonable opportunity and principles of natural justice" in the words of the Apex Court in *Managing Director, ECIL, Hyderabad*,

Vs. Karunakar, etc. etc., "are not incantations to be invoked nor rites to be performed on all and sundry occasions". Besides, it has been observed by the Apex Court in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, that the principles of natural justice or holding of enquiry is neither universal principle nor inflexible dogma and that principles of natural justice are not incapable of exclusion in a given situation. Further in Dr Rash Lal Yadav Vs. State of Bihar and Others, it has been held that if the statute expressly or by necessary implication omits the application of rule of natural justice the statute will not be invalidated for that omission on the ground of arbitrariness.

14. In Union of India and another Vs. W.N. Chadha, the Apex Court has ruled that the rule of audi alteram partem is a rule of justice and its application is excluded where the rule will itself lead to injustice. There is exclusion of the application of the rule to the cases where nothing unfair can be inferred by not affording an opportunity to present and meet a case. The rule cannot be applied to defeat the ends of justice or to make the law "lifeless, absurd, stuffing and self-defeating or plainly contrary to the common sense of the situation." The rule can certainly be jettisoned in exceptional circumstances where compulsive necessity so warrants.

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 Vs. Addl. District Magistrate, Allahabad, U.P. and others, and in the matter of M/s. Orient Paper and Industries Ltd. and another Vs. State of Orissa and others, . 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 u/s 38E of the said Act. Certainly the said status of tenancy is subject to right to challenge by the landowner in terms of Sections 35 and 37A. As already stated above, any 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 u/s 38E, there is yet another enquiry u/s 38A-I regarding subsisting encumbrances over the lands which are to be subject to declaration u/s 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 u/s 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 u/s 38E, there is inquiry held in terms of Rule 23 of the said Rules, but there is no scope for individual notices.

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 u/s 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 u/s 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 u/s 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*, . The authority issuing certificate u/s 38E does not pass any order as such, and therefore, there is no question challenging the said certificate by way of appeal u/s 90. A certificate is merely a formative 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 u/s 90 against the certificate issued u/s 38E, the point as to whether the Petitioner acquired knowledge about the declaration u/s 38E 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 u/s 38E 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 u/s 90 of the said Act.

17. Then remains the third ground i.e. the Respondents were not the protected tenants therefore thus were not entitled for declaration u/s 38E. Whether a person is a protected tenant or not is not a pure question of law. It is a mixed question of fact and law. As already seen above when a person wanted to dispute the status of another person as that of the protected tenant or deemed protected tenant, the former was required to file necessary application in that regard and invite an order of the authority on the dispute regarding the status of tenancy in favour of another person. Admittedly the Petitioner has never filed any such

application against the Respondents disputing their claim as the protected tenants in relation to the suit property. On the other hand undisputedly the Respondents had filed proceeding for restoration of possession of the suit land. In the circumstances in absence of any order of the competent authority regarding denying the right of protected tenant to the Respondent in relation to the suit property, no fault can be found with the declaration issued u/s 38E in favour of the Respondents in relation to the suit properties.

18. In the circumstances, therefore, there is no case for interference. Hence the petition fails and is hereby dismissed with no order as to costs. Rule is discharged. Interim orders stand vacated.