



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11222 OF 2025

1. SHANKAR S/O. LAXMAN KURULE
2. DEVIDAS S/O. GANPATI KURULE
3. SOJARBAI W/O. LAXMAN KURULE
4. SHRIRAM S/O. MOHAN JADHAV
5. BHASKAR S/O. UTTAMRAO JADHAV
6. MADHUKAR S/O. UTTAMRAO JADHAV
7. SADASHIV S/O. UTTAMRAO JADHAV
8. MAHADEO S/O. UTTAMRAO JADHAV
9. SHAHADEO S/O. UTTAMRAO JADHAV
10. SURESH S/O. UTTAMRAO JADHAV .. Petitioners

VERSUS

1. THE STATE OF MAHARASHTRA,
REVENUE AND FOREST DEPARTMENT,
MANTRALAYA, MUMBAI
2. SHAIKH SABIYA ANJUM SHAKIL
THROUGH ITS GENERAL POWER OF
ATTORNEY HOLDER,
POOJA SHASHIKANT DESHBHRATAR
3. THE DISTRICT COLLECTOR,
TQ. & DIST. BEED
4. THE TAHSILDAR, BEED .. Respondents

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Advocate for the Petitioners : Mr. S. S. Kazi
AGP for Respondent / State: Mr. Rajdeep D. Raut
Advocate for Respondents No.2: Mr. R. N. Dhorde, Senior Advocate
i/b. Mr. S. E. Shekade

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CORAM : ARUN R. PEDNEKER, J.
Reserved On : 19.09.2025
Pronounced On : 16.10.2025

JUDGMENT:

1. Heard. With consent of the parties, the matter is taken up for final hearing.

2. By the present petition the petitioners are challenging the order dated 04.09.2025, passed by the Tahasildar, Beed in proceeding no.2025/KUL/KAVI4012, thereby cancelling the entries in the mutation record and all other government offices in respect of land survey no.19 bearing Gut No.24, 25, 26, 27, 28, 29 and survey no.20 having Gut No.15, 16, 17, 18, 19, 20, 21, 22 and 23, situated at Mouje Talegaon, Distirct Beed, by cancelling the certificate dated 01.09.1960 issued under Section 38(E) of the Hyderabad Tenancy and Agricultural Land Act, 1950 (for brevity “**the 1950 Act**”) .

3. The case in brief of the petitioners is that in a proceeding initiated under Section 38(E) of the 1950 Act, name of Ganpati Kundlik Kurule and Abaji Ramji Jadhav were recorded in the abstract of protected tenancies part one Namuna No.5 on 15.09.1957 in respect of land survey no.19, admeasuring 19 Acres 22 Are and survey no.20, admeasuring 21 Acres 04 Are. The occupancy price was deposited by the tenant namely

Ganpati Kundlik Kurule and Abaji Ramji Jadhav on 03.05.1966. Ganpati Kundlik Kurule died on 08.02.1993 leaving behind him two sons namely Laxman Ganpati Kurule and Devidas Ganpati Kurule and vide mutation entry no.187 the names of legal heirs of Ganpati Kundlik Kurule came to be recorded on 04.12.1995. It is submitted that Abaji Ramji Jadhav died leaving behind him two sons namely Uttamrao Jadhav and Mohan Jadhav. One of the legal heir of Abaji Ramji Jadhav namely Uttamrao died on 20.10.2005 and vide mutation no.1669 dated 27.02.2006 the legal heirs of Uttamrao Jadhav namely Padminibai Uttamrao Jadhav, Bhaskar Uttamrao Jadhav, Madhukar Uttamrao Jadhav, Sadashiv Uttamrao Jadhav, Mahadev Uttamrao Jadhav, Shahadeo Uttamrao Jadhav, Suresh Uttamrao Jadhav and Gawlanbai Sheshrao Baglane came to be recorded as legal heirs of deceased Uttamrao Jadhav. As per mutation entries the names in 7/12 extract of the petitioners were recorded in the above gut numbers.

4. It is submitted that the petitioners received notice from the Tahsildar, Beed. From the notice the petitioners came to know that Pooja Shashikant Deshbhratar, R/o. Sarda nagri, Beed has filed an application before the Tahsildar, Beed with the prayer to convert the land survey no.19 and 20 from class 1 to class 2 and the petitioners received notice in

respect of proceeding filed by Pooja in the capacity of General Power of Attorney holder of Shaikh Sabiya Anjum Shakil, Respondent No.2.

5. The Respondent no.2 in the application has contended that the certificate issued under Section 38(E) of the 1950 Act granted on 01.09.1960 in favour of the Petitioners be declared as fraudulently obtained and cancelled. The petitioners objected to the proceeding as without jurisdiction. Reply was filed by the petitioners on 19.08.2025 along with an application questioning the maintainability of the application filed by the Respondent No.2. The Tahsildar notwithstanding the objection of jurisdiction raised decided the matter on merits and the certificate issued under Section 38(E) of the 1950 Act was quashed and the Tahsildar directed all concerned to enter the name of the owners namely Gulabbi Kishan Prasad by deleting all the entries of the petitioners.

6. The petitioners challenge the impugned order in the present writ petition as being passed without jurisdiction and that the deemed ownership certificate issued 65 years back has been quashed by the Tahsildar.

7. It is submitted that the petitioners also filed an appeal under erroneous advice. But, before me, statement is made that they are

withdrawing the appeal as the writ petition is the remedy and, accordingly, they have filed the purshis to withdraw the appeal before the appellate authority and are pursuing the present writ petition.

8. The learned counsel for the petitioners has placed reliance on the following citations:

- “1. 2025 SCC Online Bom 2833*
- 2. 1999 SCC Online Bom 745*
- 3. (2021) 16 SCC 1*
- 4. (2013) 4 SCC 465*
- 5. 2011 (4) Mah L R 314 (SC)”*

9. Per contra, the learned Senior Advocate Mr. R.N. Dhorde i/b. Mr. S.E. Shekade appearing for respondent no.2 submits that statutory appeal is available to challenge the impugned order and on merits of the matter he submits that certificate under Section 38E was fraudulently obtained. The Tahsildar has the jurisdiction to entertain the proceeding when fraud is pointed out to him and that he has rendered a finding on fraud. It is for to the writ petitioners to challenge the same in the appellate proceedings. But, it cannot be said that the Tahsildar has no jurisdiction to entertain the application for recalling or setting aside the certificate issued under Section 38(E) of the 1950 Act on the ground of fraud when the same is noticed and pleaded. As such, he submits that this court should not entertain writ petition and the petition may be dismissed.

10. With respect to the question raised, whether the Tahsildar can recall / revoke certificate issued under Section 38E of the 1950 Act after lapse of 65 years, the learned Senior Advocate has submitted that writ petition is not maintainable as the order passed by the Tahsildar is appealable under the Act. The learned Senior Advocate has relied upon the Judgment of the Hon'ble Apex Court in the case of **United India Insurance Co. Ltd. Vs. Rajendra Singh and others, (2000) 3 SCC 581** and the Judgment of **A. V. Papayya Sastry and others Vs. Government of Andhra Pradesh and others, (2007) 4 SCC 221** to contend that the order obtained by fraud can be set aside and that fraud avoids all judicial acts. It is submitted that, it is the settled proposition that the Judgment, Decree or Order obtained by playing fraud on the court, tribunal or authority is an nullity and non-est in the eye of law and such a Judgment, Decree or Order by the first court or by the final court, has to be treated as nullity by every court, superior or inferior.

Reference is also made to the case of **Lazarus Estates Ltd. Vs. Beasley Lord Denning, All ER p. 345 C)**, stating that no Judgment of a court, no Order of the Minister, can be allowed to stand if it has been obtained by fraud.

Reference is also made to the Judgment of **S. P. Chengalvaraya Naidu Vs. Jagannath (1994) 1 SCC 1.**

11. The learned Senior Advocate submits that when the matter came before the Tahsildar as it was pleaded before him that certificate is itself bogus and without any base, the certificate issued by the Tahsildar under Section 38(E) of the 1950 Act is not in existence. Therefore, by giving various reasons Tahsildar has passed the detailed order. It is submitted that Section 90 and 91 of the 1950 Act there are specific provisions of appeal and revision.

Reliance is also placed on the Judgments of **Vaijnath Kharpure and others Vs. Mahadev M. Mote, 2010 (5) BCR 860**, so also, **Hanmanta Daulaappa Nimbal, since deceased by his heirs and L.R.S. Vs. Babasaheb Dajisaheb Londhe, 1996 (2) BCR 162**.

12. On the factual aspect, the learned Senior Advocate for respondent no.2 has submitted that the original owner of the properties is Gulabbi Kishan Prasad. The said land was madatmash and situated in survey nos.19 and 20. The said land is Inam land and through document named Muntakhab it was transferred to the Gulabbi, who happens to be the grandmother of Anjum, who is respondent no.2 in the present writ petition. Muntakhab is a document that shows the Nizam, the king of Hyderabad region, in post independent period has transferred certain portion of land through the registered document. These documents are considered as proof of ownership. The disputed land was shown by the

petitioners to be in possession of the government since 20.07.1955 to 01.07.1960. The petitioners tried to show that there is a document namely हक्काचा प्रकार due to which the forefathers of the petitioners namely Ganpati Kundlik Kurule and Abaji Ramji Jadhav's names came in हक्काचा प्रकार. The said entry was taken by the Talathi who did not have authorization to insert said entry. In fact these powers completely belong to Higher Revenue Authority. Therefore the basic document over which the petitioners are relying is prima facie bogus.

There is a document in गावाचा नमुना नं. ९ (इनाम जमिनीचे लावणीपत्रक) where till 1961 to 1963 in ownership column name of Gulabbi is mentioned. Even the concern Talathi has taken one incomplete remark entry of "Khalsa" on 01.02.1962. The learned Tahsildar of that time has granted stay to the Khalsa entry by the concerned Talathi. Even the petitioners have submitted said document at page no.39 in present writ petition and it also shows that, Tahasildar has granted stay.

The respondent no.2 submits that the forefathers of petitioners namely Ganpati KundlikAbaji Ramji. By joining hands with the concerned Talathi, bogus and fraudulent certificate is prepared merely on papers and in 1993 the bogus mutation entry no.770 was inserted.

The respondent no.2 submits that the said land is Inam land and the provisions of the 1950 Act were not been applicable. Prima facie,

it appears that, by preparing bogus documents petitioners want to continue the bogus ownership.

It ought to be considered that, said Inam land belongs to the grandmother of present respondent no.2. Her name was in ownership column. Therefore, she did not have any necessity to file application for Khalsa. It appears that, with her name certain applications are filed for Khalsa of which she does not have any concern.

It is submitted that, prima facie, it appears that, the petitioners does not have any concern with the alleged property. Basically, Gulabbi was the original owner since pre-independence period and her name was present in revenue record till 1992. Without any reason, her name was deleted from the revenue record. There are no justification to delete her name. As soon as the respondent no.2 received knowledge regarding the fraud committed at the instance of petitioners, the respondent no.2 approached the competent authority and the authority has exercised the judicial powers and passed an reasoned order which does not need any interference in exercise of writ jurisdiction. The learned Tahsildar has made observation regarding the merits of the matter as under:-

"वास्तविक, अशा प्रकारची नोंद घेण्याचे अधिकार हे तलाठी यांना नाहीत. त्या बाबतचे अधिकार सक्षम अधिकारी यांना प्रदान केलेले आहेत. त्यावरून मुळातच कलम 38 (ई) प्रमाणे गैरअर्जदारांची घेण्यात आलेली मालकी हक्काची नोंद किंवा उपकलम (4) चे शर्तीनुसार प्रतिबंधित मालकी कब्जा प्राप्त झाला आहे, ही नोंद कायदेशीर असल्याचे दिसून येत नाही. गैर अर्जदार यांनी त्या बाबत योग्य ते कायदेशीर पुरावे प्रकरणात दाखल केलेले नाहीत. मुळातच,

गैरअर्जदाराचे कथन व पुराव्यावरून त्यांनी गैरअर्जदार हे सदर जमिनीवर कब्जेदार असल्याचे कथन केलेले आहे. मात्र, हैदराबाद इनाम निर्मूलन व रोख अनुदानात कायदा 1954 चे कलम 6(1) अ प्रमाणे जमिनी बाबत फेर मंजूर झाल्याचे नमूद केलेले आहे. त्यामुळे सन 1955 ते 1960 या काळात सदर जमिनीचे कब्जे हे शासनाकडे वर्ग करण्यात आलेले होते. त्यामुळे गैरअर्जदारांचे कथन हे कायदेशीर असल्याचे दिसून येत नाही व नमूद कागदपत्रे व पुराव्यावरून गैरअर्जदारांचे वादग्रस्त जमिनीवरील हक्क व अधिकार एकाच वेळी हैदराबाद कुळ कायदा 1950 व हैदराबाद इनाम निर्मूलन कायदा 1954 कागदपत्रे व पुराव्या शिवाय मान्य करता येणार नाहीत. प्रकरणात दाखल असलेली कागदपत्रांचे अवलोकननावरून असे दिसून येते की, गैरअर्जदारांच्या हैदराबाद कुळ कायदे 1950 चे कलम 38 (ई) अन्वये घेण्यात आलेली नोंदी या बेकायदेशीर व तत्कालीन तलाठी व महसूल अधिकारी यांचेशी संगनमत करून अभिलेखांमध्ये नोंदविल्या असलेल्या स्पष्ट होत आहे. म्हणून माझे मत असे आहे की, वादग्रस्त जमिनी ह्या इनामी जमिनी आहेत व त्यामुळे सदर जमिनीस हैदराबाद कुळ वहिवाट व शेतजमीन अधिनियम 1950 मधील कलम 38 (ई) हे लागू होत नाही. तसेच, गैरअर्जदार यांचे रेस-ज्युडिकेटा व मुदतीच्या कायदा या बाबतचे कथन अर्जदारांचे प्रकरणास लागू होत नाही. त्यामुळे गैरअर्जदार यांनी रेस-ज्युडिकेटा बार येत असल्याचे दिनांक 2-9-2025 चा अर्ज नामंजूर करणे योग्य आहे. त्यामुळे गैरअर्जदार यांना इनाम मदत - माश जमीन सर्वे नंबर 19 व 20 बाबत कायदेशीर नाही."

It ought to be considered that, if the petitioners wants to challenge the said order there are specific provisions as contemplated in section 90 & 91 of the Hyderabad Tenancy and Agricultural Land, 1950. Instead of approaching the Deputy Collector (Land Reform) the petitioners directly approached before this Hon'ble Court without availing the appropriate efficacious alternate remedy. Hence, the present petition is devoid of merits and liable to be dismissed by applying exemplary costs.

13. Having considered the rival submissions the first question that arises for consideration is, whether this court in exercise of writ

jurisdiction can entertain the present writ petition when there is alternate provision of appeal (if any) ?

14. The Hon'ble Apex Court in the case of **Radha Krishan Industries Vs. State of Himachal Pradesh and others, (2021) 6 SCC 771** has summarized the law applicable on entertaining the writ petition by High Court as under:

“27. The principles of law which emerge are that:

27.1 The power Under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

27.2 The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

27.3 Exceptions to the Rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

27.4 An alternate remedy by itself does not divest the High Court of its powers Under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

27.5 When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy Under Article 226 of the Constitution. This Rule of exhaustion of statutory remedies is a Rule of policy, convenience and discretion; and

27.6 In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”

15. Thus, from the above Judgment of **Radha Krishan Industries Vs. State of Himachal Pradesh and others** (supra), if the petitioners demonstrates that the order or proceedings of the Tahsildar are fully without jurisdiction, this court can entertain the writ petition, even if there is alternate remedy of appeal.

16. The undisputed fact of the matter is that the certificate is issued to the forefathers of the petitioners under Section 38(E) of the 1950 Act in the year 1960 declaring them to be the protected tenants of their land and the purchase price has been paid in 1966.

17. The issue arising for consideration is the nature of certificate issued under Section 38E of the Hyderabad Tenancy and Agricultural Lands Act, 1950 and the jurisdiction of the Tahsildar to revoke it after long lapse of time on the allegations of fraud. This Court in the case of **Kausalyabai w/o Ramanlal Ladda & Anr. V/s. Shankar s/o Khanuji Kothimbire & Ors.; 2021 (5) Mh.L.J. 546** has held that the ownership is conferred by statutory provisions after inquiry and the certificate granted 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. Order of grant of certificate does not partake the character of an order in the strict sense. As such no appeal or revision would be

maintainable against the order granting Section 38-E certificate. In this regard paragraph nos.12 to 15 of the judgment of **Kausalyabai w/o Ramanlal Ladda & Anr. (supra)** are quoted below:

“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 and others, 2001(3) Mh.L.J. 380 = 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."*

18. In the case of **Bharatlal s/o Hemraj V/s. Kondiba Govinda Jadhav & Ors; 2001 (3) Mh.L.J. 380**, this Court has observed the

ownership of land in protected tenant is created by virtue of provisions Section 38E and that there is no provision for individual notice before issuing declaration of ownership of land in favour of the protected tenant. Status of tenancy is subject to the right of challenge by the law in terms of Section 35 and 37-A and a person interested in disputing the right of other person as a tenant is required to file necessary application in that regard to the authority specified under the law and upon holding necessary inquires in the matter has to decide the controversy and thereupon prepare a list of persons who can be considered as protected tenants or deemed to be protected as the case may be. Before proceeding to make a declaration under Section 38A there is yet another inquiry 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 land owners are given ample opportunities to dispute the right of a person claiming to be a protected tenant or deemed protected tenant and only after detailed enquiry, the landholder i.e. the protected tenant or a deemed protected tenant becomes the deemed owner. That being so, there is no need for 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. Before finalising the list of deemed owners under Section 38E, there is inquiry held in terms of Rule 23. It is further held

that Section 38E is not a decision or an order within the meaning of the said expression under Section 90 of the Act. The ownership certificate under Section 38E is to be issued in Form XVI which is a certificate conferring ownership of a 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 to be termed as order within the meaning of said expression under Section 90. The authority issuing certificate under Section 38E does not pass any order as such and therefore there is no question of challenging the said certificate by an appeal under Section 90. In this regard, paragraph nos.15 and 16 of the judgment of **Bharatlal s/o Hemraj** (supra) and are quoted 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 vs. 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 vs. State of Orissa and others reported in 1991 Suppl. 1 SCC 81 = AIR 1991 SC 672. In section 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 challenge by the

landowner in terms of sections 35 and 37A. As already the said Act. Certainly the said status of tenancy is subject to right to 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 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 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.

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' has been held by the Apex Court in Mukhtiar Singh and another vs. State issuing certificate under section 38E does not pass any order as such, and of Punjab reported in 1995(5) SCC 760-AIR 1995 SC 686. The authority the said certificate by appeal under section 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 under section 90 against the certificate issued under section 38E, the point as to whether the petitioner acquired knowledge about the declaration under section 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 under section 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 under section 90 of the said Act.”

19. The long standing legal position as regards the nature of certificate issued under Section 38E of the Hyderabad Tenancy and Agricultural Lands Act, 1950 is that it is only a formal declaration which is granted after inquiry under other provisions of the Act and not amenable to appellate or revisional jurisdiction. Now coming to the facts of the present case. The application filed by the Respondent indicate that it is under filed under Section 70B of he Maharashtra Tenancy and Agricultural Lands Act, 1948. However, in the course of argument the learned senior counsel appearing for the Respondent/Original Applicant has made an attempt to explain the same i.e. the application as being under Section 8 of the Hyderabad Tenancy and Agricultural Lands Act,

1950 and further that an Authority which issues a certificate has jurisdiction to cancel the same, if it is demonstrated before the authority that the certificate is fraudulently obtained.

20. In the application it is mentioned that the same is filed under Section 70B of the Maharashtra Tenancy and Agricultural Lands Act, 1948 and it is stated that the applicant is one Ms. Puja Shashikant Deshbratar and is stated to be holding power of attorney on behalf of Shaikh Sabiha Anjum Shakil Ahmed who is the legal heir of the original land owner Gulab bi Avje Kisan Prasad. It is stated in the application that the Original Owner Gulabi bi has received a Muntakhab from the Nizam of Hyderabad as Madatmash land. It is further stated that the Petitioners herein have received the certificate under Section 38E of the Hyderabad Tenancy and Agricultural Lands Act, 1950 and the same was illegally granted on 14.09.1961. It is stated that there were some interim orders passed by the Tahsildar and notwithstanding the interim orders the authority i.e. the Circle Officer has proceeded to pass final order granting 38E certificate. It is stated that the land was given under the Inam and there could have been no application of the protected tenancy under Hyderabad Tenancy and Agricultural Lands Act, 1950 on the said land and as such the 38E certificate issued is illegal. The application filed by the Respondent at Para 7 read as under:

७. हेकी, वादग्रस्त जमीन ही ईनामी जमीन असल्यामुळे सदर जमिनीवर कायद्याने कुळ लागत नाही तरीसुद्धा गैरअर्जदार व त्यांचे पूर्वज गणपत कुंडलिक व आबाजी रामजी यांनी ईनाम जमिनीवर कुळ असल्याचे बनावट कुळ कायद्या अंतर्गत कलम ३८ ई चे प्रमाणपत्र तयार करून महसूल अभिलेखात गैरअर्जदार यांनी चुकीची, बोगस व बनावट नोंद करून घेतलेली आहे जी रद्द होणे न्यायाचे दृष्टीने योग्य व आवश्यक आहे.

21. It is stated that without taking permission, the Circle Officer at the relevant time has recorded the bogus entry. It is stated that the certificate is issued on 01.09.1960 under Section 38E, however, in 1963 the Tahsildar had given stay to it. As such the certificate is wrongly issued and the same is bogus. It is stated that the land comes within Inam properties and on the said land such certificate ought not to have been issued.

22. In the application filed by Respondent No.2, it is not stated when the alleged fraud came to the knowledge of the original applicant i.e. the owner. The application is also filed in the name of Power of Attorney name and not in the name of the legal heirs of the original owner. How this particular property came to be allotted to one particular legal heir by the original family of the landlord is not known. On the date of deemed ownership the landlord loses all the rights over the agricultural property except to the extent of receiving the purchase price determined under the Act. In the instant case, such price is also paid by

the petitioners forefathers. The occupancy price came to be deposited by the tenant on 03.05.1966. The petitioners are in long standing possession of the property since February 1957 and that no objection was raised by the owners at any point of time. The statutory appellate provisions relating to the inquiry of protected tenancy stood exhausted long back. The case is being put up before me by the learned counsel that a fraud is noticed, however, there are no details of fraud. A fraud is a deliberate act of deception with the design of securing something by taking unfair advantage of another. It is also a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Fraud as is well known vitiates every solemn act. Fraud and justice never dwell together. The Hon'ble Supreme Court in the case of **State of Andhra Pradesh & Anr. V/s. T. Suryachandra Rao; 2005 (6) SCC 149** held as under:

“8. By "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill will towards the other is immaterial. The expression "fraud" involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable or of money and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied.

9. A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage.”

23. Recently, the Hon'ble Supreme Court of India in the case of **Vishnu Vardhan alias Vishnu Pradhan V/s. State of Uttar Pradesh & Ors.; 2025 SCC OnLine SC 1501** has dealt with this aspect in detail where the Court has noted the judgment in **A.V. Papayya Sastry V/s. Govt. A.P.; 2007 (4) SCC 221** as under:

"21. Now, it is well-settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief

It has also noted the judgment given by Denning, L.J. in Lazarus Estates Ltd. (supra). Justice Edward Coke proclaimed:

"Fraud avoids all judicial acts, ecclesiastical or temporal."

22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order-by the first court or by the final court-has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.

23. **

24. In Duchess of Kingstone, Smith's Leading Cases, 13th Edn., p. 644, explaining the nature of fraud, de Grey, C.J. stated that though a judgment would be res judicata and not impeachable from within, it might be impeachable from without. In other words, though it is not permissible to show that the court was "mistaken", it might be shown that it was "misled". There is an essential distinction between mistake and trickery. The clear implication of the distinction is that an action to set aside a judgment cannot be brought on the ground that it has been decided wrongly, namely, that on the merits, the decision was one which should not have been rendered, but it can be set aside, if the court was imposed upon or tricked into giving the judgment.

25. It has been said: fraud and Justice never dwell together (fraus et jus nunquam cohabitant); or fraud and deceit ought to benefit none (fraus et dolus nemini patrocinari debent).

d. The judgment by Denning, L.J. in Lazarus Estates Ltd. (supra), which has since been quoted with approval by this Court in a catena of decisions including Nidhi Kaim (supra), asserted intolerance for fraud in legal proceedings in the following words:

No court... will allow a person to keep an advantage which he has obtained by fraud. [...] Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved, it vitiates judgments, contracts and all transactions whatsoever....

62. We are also mindful of the legal principle that if a fact could have been discovered through the exercise of due diligence, its non-disclosure does not constitute suppressio veri or suggestio falsi. Profitable reference may be made to the decision in Shri Krishnan v Kurukshetra University.

24. In the instant case, it is to be seen that certificate is granted under Section 38E after inquiry under the other provisions of the Act. As already noticed above grant of certificate under Section 38E is only a formal declaration and there is prior inquiry contemplated under the Act by the State which can be challenged by the land owner. It is only on completion of inquiry under the Act that a formal declaration is given under Section 38E. The owners have the right to challenge the findings of inquiry before the Appellate Authority. The period for such challenge is long over. It is not known how fraud is noticed by the applicant and at what stage. The Petitioners are in settled possession from 1957 and

declaration being made in the year 1960. It is too late today to allege fraud without setting out the particulars of knowledge of fraud and how fraud was played upon the applicants or the authorities and how and when the applicants became aware of the same. The petitioners have also paid the occupancy price of the land in 1966. The owners have lost all right, title and interest over the property and the applicant has no cause to re-open the certificate granted. The allegations made by the applicant are also that the land being a Madatmash land no such declaration under Section 38E ought to have been granted. These arguments do not relate to fraud and are not available to the applicant, as they would entail a different nature of inquiry, assuming that the applicant has any authority to file an application. The Hon'ble Supreme Court in the case of **Electrosteel Castings Limited V/s. UV Asset Reconstruction Company Limited and Others; (2022) 2 SCC 573** has held that where the parties put up a case of fraud, the parties pleading must set forth full particulars and the case can be decided on the particulars as laid. There can be no departure from them in evidence. Para 8 and 8.1 of the judgment of **Electrosteel Castings Limited (supra)** are quoted below:

"8. In Bishnudeo Narain V/s. Seogeni Rai; 1951 SCC 447 in para 22, it is observed and held as under:

"22.Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no

departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice however strong the language in which they are couched may be, and the same applies to undue influence and coercion. See Order 6 Rule 4, Civil Procedure Code."

8.1. Similar view has been expressed in Ladli Parshad Jaiswal and after considering the decision of the Privy Council in Bharat Dharma Syndicate Ltd. v. Harish Chandra¹⁰, it is held that a litigant who prefers allegation of fraud or other improper conduct must place on record precise and specific details of these charges. Even as per Order VI Rule 4 in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, particulars shall be stated in the pleading. Similarly in K.C. Sharma & Co. it is held that "fraud" has to be pleaded with necessary particulars. In Ram Singh, it is observed and held by this Court that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances by which the suit is barred by law of limitation."

25. It is also interesting to note the exercise of jurisdiction by the Tahsildar. The application filed by Respondent No.2 indicates that the same is filed under the Maharashtra Tenancy and Agricultural Lands Act, 1948 which is not applicable to the region and the Act applicable would be the Hyderabad Tenancy and Agricultural Lands Act, 1950. The certificate is issued under the Hyderabad Tenancy and Agricultural Lands Act, 1950 and there is no provision under the 1950 Act by which the Tahsildar could have revoked the certificate. After grant of certificate, further processes as contemplated under the Hyderabad Tenancy and Agricultural Lands Act, 1950 of payment of occupancy price is complete

in 1966 and the remedies available are also to be exhausted within the time frame. The alleged fraud has to be pleaded with particular details as to how the deception is played by the Petitioners on the authority constituted. The case pleaded is that the revenue authorities i.e. the Circle Officer has granted certificate under Section 38E although there was a pending stay order by the Tahsidlar and that the land for which certificate is granted is Inam land on which no protected tenancy can be declared. The Revenue authority which issued a certificate under 38E gives only a formal declaration of protected tenancy and the same is after the inquiry as conducted under the preceding sections of the Act as noticed in the judgment of **Bharatlal s/o Hemraj** (supra). The contention of the Petitioners that the land of the applicant being an Inam land on which there can be no declaration of protected tenancy, would entail a different inquiry as regards the nature of land being Inam (assuming that the legal contention is correct). Error in grant of certificate by the authorities is different from fraud. Erroneous orders have to be challenged within time frame before the appropriate authority.

26. In the instant case, the Tahsildar in entertaining the application has acted beyond the authority of law and without jurisdiction. The application was submitted on 12.08.2025 and the impugned order is dated 04.09.2025. The Tahsildar has acted in extreme haste and has exercised jurisdiction which is not conferred upon him. He

has acted on assumed jurisdiction on spacious plea of 'Fraud' being committed in obtaining the ownership certificate under Section 38E in the year 1960 of which occupancy price was paid in 1966. The action of the Tahsildar in entertaining the application and adjudicating the same is without jurisdiction.

27. For the reasons noted above, the Writ Petition is allowed and the impugned order dated 04.09.2025 passed by the Tahsildar, Beed is set aside.

[ARUN R. PEDNEKER, J.]