Samatha vs State Of Andhra Pradesh And Ors on 11 July, 1997

Equivalent citations: AIR 1997 SUPREME COURT 3297, 1997 (8) SCC 191, 1997 AIR SCW 3361, (1997) 3 APLJ 49, 1997 (4) SCALE 746, (1997) 6 JT 449 (SC), (1997) 2 SCJ 539, (1997) 6 SUPREME 530, (1997) 4 SCALE 746

Author: K. Ramaswamy

Bench: K. Ramaswamy, S. Saghir Ahmad

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           CASE NO.:
Appeal (civil)  4601-02 of 1997

PETITIONER:
SAMATHA

RESPONDENT:
STATE OF ANDHRA PRADESH AND ORS.

DATE OF JUDGMENT: 11/07/1997

BENCH:
K. RAMASWAMY & S. SAGHIR AHMAD & G.B. PATTANAIK

JUDGMENT:
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JUDGMENT 1997 Supp(2) SCR 305 With C.A. 4603 of 1997 The Judgment of the Court was delivered by K. RAMASWAMY, J. Leave granted.

These appeals are directed to resolve mutually inconsistent law adumbrated by two Division Benches of Andhra Pradesh High Court. The appeals arising from SLP(C) No. 17080-81/95 are filed against the judg-ment passed on April 28, 1995 in Writ Petition Nos. 9513/93 and 7725/94 in which the Division Bench has held that the Andhra Pradesh Scheduled Area Land Transfer Regulation (1 of 1959), as amended by Regulation II of 1970 (for short, the 'Regulation') and the Mining Act (67 of 1957) do not prohibit grant of mining leases of Government land in the scheduled area to the non-tribals. The Forest Conservation Act, 1980 (for short, the FC Act') does not apply to the renewals. The Andhra Pradesh Forest Act, 1967 also does not apply to the renewal of the leases. It, accordingly dismissed the writ petitions filed by the appellant challenging the power of the Government to transfer the Government land situated in the tribal area to the non-tribals for mining purpose.

In the appeal arising from SLP(C) No. 21457 of 1993 tiled by Hyderabad Abrasives and Minerals, another Division Bench, earlier had taken dramatically the opposite view and held that mining leases are illegal. The word 'person' used in Section 3 of the Regulation includes Govern-ment. Any lease to the non-tribals even of the Government land situated in scheduled area is in violation of

Section 3 and so is void. Equally, it held that a mining lease in a forest area tor non-forest purpose or renewal thereof, without prior approval of the Central Government, is in violation of Section 2 of the FC Act. Accordingly, the Division Bench directed the Government to prohibit mining operations in scheduled area except that the mines stacked on the surface be permitted to be removed after obtain-ing proper permits. This decision, though earlier in point of time, was not brought to the notice of later Bench mentioned above.

The admitted facts are that Borra reserved forest area along with its environs consisting of 14 villages, is the notified scheduled area in Anan- thagiri Mandal of Visakhapatnam District of Andhra Pradesh. The State Government granted mining leases in this area to several non-tribal per- sons. K. Appa Rao, respondent No. 13, was granted mining lease in that reserved forest area. Most of the area granted to M/s. Perclase India Ltd., respondent No. 7 falls in reserved forest area. M/s. Unirock Minerals Pvt. Ltd., respondent No. 8 had 125.30 acres in the reserved forest area and 45.70 acres in the non-reserved forest area. M/s. Kalyani Minerals, respon- dent No. 10 had 48.00 acres in the reserved forest area and 32 acres in non-reserved forest area. One M. Seetharama Swamy was granted mining lease of an extent of 300 acres in Borra reserved forest area. Sri. R.K. Deo is also having mining lease in that area. Respondent No. 9 is said to be the legal heir of M. Seetharama Swamy. These facts are admitted in the counter- affidavit filed by the Government.

It is also an admitted fact that Ananthagiri Mandal in which the mining areas are situated, is within the scheduled area. The tribal people from tribal groups are inhabiting therein. Two mining leases were granted to one Chalpati Rao, respondent No. 11 for graphite to an extent of 50 acres in Nandkote Reserve Forest for a period of 20 years on August 26, 1971. The lease deed was executed on January 24, 1972 and expired on January 23,1992; it is stated that thereafter mining operations are not being carried on. Similarly, mining lease for an extent of 111 acres of land situated in Chimidipalli and Saripalli villages of Ananthagiri Mandal, was granted on August 29,1974. The lease was executed on December 20,1974 for a period of 20 years which expired on December 19, 1994. Mining lease for Andhra Phosphates (P) Ltd. was granted to an extent of 271.544 hectares in Y. Seetharampuram, Veduruvada Reserved Forest on March 23,1957 for 20 years. The lease deed was executed on June 10, 1957 which was renewed for 20 years on May 2, 1978. The renewed deed was executed on the even date which would continue upto June 9, 1997. As stated earlier, K. Apparao, respondent No. 13, was granted mining lease for 20 years on July 20, 1978 which was executed on January 24, 1979. It is due to expire on July 23, 1999. But, it is stated that at present he is not working out the mining operations. Respondent No. 14, M. Venkatapathi Raju was granted mining lease for 13.84 acres for yellow Ochra in unserveyed revenue poramboke, in Konapuram, Ananthagiri Mandal for a period of 20 years on April 4, 1980. The lease deed was executed on April 26, 1981 and is to expire on April 25, 2001. It is claimed that the lease is not being worked out and it is said to have lapsed. The lease granted to M/s. Visaka Mines & Minerals, respondent No. 15, is said to be in non-surveyed area in Mandaparti village of Ananthagiri Mandal on July 20, 1978 for a period of 20 years. The lease deed was executed on December 18, 1978 and it would expire on December 17, 1998. They are working out their mines. Another lease was granted for 130 acres in reserved forest area of Sivalingam village of Ananthagiri Mandal on September 20, 1977 for a period of 20 years which expires on December 30, 1997. It is stated that the lease had lapsed since it was not being worked out, w.e.f. February 9, 1988 as per G.O.Ms. No. 295 dated June 6, 1989.

Associated Mica Exports, respondent No. 16 holds to leases for 50 acres in Dumbriguda village of Ananthagiri Mandal of a period of 20 years granted on March 13,1986. The lease was executed on September 11, 1986 and it is to expire on September 10,2006. It is stated that lease is not being worked out at present. They had another lease for 10 acres in Borra group of villages for 20 years granted on October 20, 1983 and the lease deed was executed on November 21, 1983. The lease is to expire on November 20, 2003. It is stated that the mining is not being worked out at present. Respondent No. 17, N. Madan Mohan Reddy had a lease in Mallagumuru village of Ananthagiri Mandal. The extent of the land has not been mentioned but the lease was granted on July 4, 1984. The lease was executed on September 5, 1984 and it is to expire on September 4, 2004. It is stated that the mine is not being worked out at present. M/s. Trowall Cements Ltd. obviously got it transferred from N. Madan Mohan Reddy to whom lease was granted for 20 years in G.O.Ms. No. 303, Industries and Commerce on July 9, 1984 for a period of 20 years. The lease deed was executed by Madan Mohan Reddy on January 7, 1985 and is due to expire on January 6, 2005. It is stated that the mining is not being worked out and steps are being taken to declare it as a lapsed lease. It is the case of the appellant that the above lease was sub-leased to M/s. Indian Rayon Industries Ltd., respondent No. 19 but in the affidavit filed by the Government, it is said that no steps are taken to win over the mine from the leased area. On the other hand, in the counter-affidavit filed on behalf of respondent No. 19, it is admitted that the mines are being worked out and that high purity calcite with minimum silica content is their product. Calcite mine is available in Visakhapatnam District at a short distance of 100 kms. from their factory situated in Visakhapatnam. One M. Laxminarayana was the lessee of an extent of 21.56 acres of land in Nimmalapadu village in Ananthagiri Mandal which is valid upto May 31, 2005. Another lease of 37.895 hectares in Ananthagiri Mandal was granted for a period of 10 years. The lease is valid upto July 3, 19%. Respondent No, 19 had transfer of the said lease in its favour in G.O.Ms. No. 4, Industry and Commerce dated January 5, 1993 and they are working out the mines. M/s. Birla Periclase is a subsidiary of respon-dent No. 19. It is stated in the affidavit filed on behalf of the Government that 21.56 acres of land containing mica, calcite, quartz and yellow ochra in Nimmalapadu village which is the subject matter of the original lease dated November 17, 1984 for a period of 20 years had by M. Lax-minarayana, was transferred to respondent No. 19. It was stated that the same has further been transferred in favour of M/s. A.P. Mineral Develop ment Corporation Ltd. on December 20, 1994 by G.O.Ms. No, 456 dated December 7, 1994. The latter is a State Government Undertaking but that is not so stated in the counter-affidavit filed on behalf of respondent No. 19. It is sought to be justified that M. Laxminarayana, Respondent No. 20, has a legal right to assign the lease in favour of Respondent No. 19. It is also admitted in the Government's counter-affidavit that by operation of Section 11(5) of the Mine and Mineral (Regulation and Development) Act, 1957 (for short, the 'Mining Act'), as amended by State Act, on and from August 14, 1991, no mining leases in the scheduled area should be granted in favour of non- tribals. It is also admitted that tribals have their patta lands in five enclosures and have their right to cultivate those lands. It is the case of the appellant that after re-survey, the entire area was identified as reserved forest area or at any rate is a forest area in scheduled area.

On this factual matrix, the appellant-Society claiming to protect the interests and life of the scheduled tribes in the area, filed the writ petitions questioning the power of the Government to grant mining leases in favour of non-tribals in the scheduled area, in violation of the Regulation

which prohibits transfer of any land in scheduled area to a non-tribal. The Division Bench of the High Court has, held that the Regulation does not prohibit transfer of the Government land by way of lease to the non- tribals. The word 'person' in Section 3 of the Regulation is applicable to natural persons, namely, tribals and non-tribals. The Regulation prohibits transfer of the land in scheduled area by a tribal to a non-tribal natural persons. The leases granted in accordance with the provisions of the Mining Act to non-tribals are valid. The FC Act was not violated by grant of leases or renewal thereof. Therefore, the writ, as sought for, was not available. Resultantly, the writ petitions were dismissed.

In the appeal of M/s. Hyderabad Abrasives and Minerals, the ad-mitted facts are that the appellant was granted mining lease for 20 years m 1974 for mining leatarite situated in Peddamaredumilli Reserved Forest Area in East Godavari District. The total extent of the land leased was 318 acres out of which it was carrying on mining operation in 42 acres. Similarly, other persons were also granted mining leases in the reserved forest area in East Godavari District. Consequently, M/s. Shakti, the voluntary organisation filed, the writ petition in the High Court questioning the. power of the Government to grant mining leases in violation of Section 3 of the Regulation and the FC Act. The lease expired in 1994. The Division Bench held that by operation of the prohibition contained in Section 3 of the Regulation and Section 2 of the FC Act, the appellant is not entitled to mining operations. However, since he had already broken up the mining, the excavated mine on the surface may be removed on obtaining permission from the appropriate authorities. Feeling aggrieved, the appellant has filed the above appeal.

The primary questions in these cases are : whether the Regulation would apply to transfer of Government land to a non-tribal?; whether the Government can grant mining lease of the lands situated in scheduled area to a non-tribal?; whether the leases are in violation of Section 2 of the FC Act?; and whether the leases are in violation of Environment Protection Act, 1986 (for short, the 'EP Act')? It is stated in paragraph 3(c) of the Petition of Samatha that the Borra Reserve Forest area was part of the domain of the Rajah of Jeypore and from time immemorial, it was a tribal area occupied by tribal villages. They have pattas in their favour and do cultivation. In 1967, 14 villages were declared as Borra Reserved Forest. About 250 tribal families settled in 14 villages have in their occupation, 436 acres of land in five enclosures. They are situated in Ananthagiri Mandal. In the counter-affidavit filed on behalf of respondent No. 10, M/s. Kalyani Minerals, it is admitted that Borra caves may be as old as million of years. It is admitted that the "entire area around Borra caves is thickly forested." In the counter-affidavit filed by the District Forest Officer, respondent No. 4, it is admitted that Ananthagiri Mandal is a scheduled area and the tribals belong to diverse denominations. It is also one of the important hill regions of the eastern ghats and is known not only for the diversity of its flora and fauna but also for the richness of mineral deposits. It is also rich in forest wealth and the minerals. It is their contention that the forest wealth in this area is the national asset.

Agriculture - a means of livelihood, succor for social justice and base for dignity of person.

Agriculture is the main part of the economy and source of livelihood to the rural Indians and a source and succor for social status and a base for dignity of person. Land is a tangible product and

sustaining asset to the agriculturists. In Waman Rao v. Union of India, [1981] 2 SCR 1 a Constitution Bench had observed that India being a predominantly agricultural society, there is a "strong linkage between the land and the person's status in social system". The strip of land on which they till and live assures them equal justice and "dignity of their person by providing to them a near decent means of livelihood". Agricultural land is the foundation for a sense of security and freedom from fear. Assured possession is a lasting source for peace and prosperity.

Agriculture is the only source of livelihood for Scheduled Tribes, apart from collection and sale of minor forest produce to supplement their income. Land is their most important natural and valuable asset and imperishable endowment from which the tribals derive their sustenance, social status, economic and social equality, permanent place of abode and work and living. It is a security and source for economic empowerment. Therefore, the tribes too have great emotional attachment to their lands. The land on which they live and till, assures them equality of status and dignity of person and means to economic and social justice and potent weapon of economic empowerment in social democracy.

Ninety per cent of the Scheduled Tribes predominantly live in forest areas and intractable terrains 95 per cent of them are below poverty line and totally depend upon agriculture or agriculture based activities and some of them turn out as migrant construction labour due to their displace-ment from hearth and home for the so-called exploitation of minerals and construction of projects. As per 1991 Census, in Andhra Pradesh the population of the Tribes was 41.99 lakhs. They adopted traditional shifting cultivation (Podu or Jhoom), since they are poor and illiterate and away from winds of modern agricultural technology and economy. Such cultiva-tion is predominantly prevalent in Andhra Pradesh, Bihar, Orissa, Madhya Pradesh, Maharashtra, Gujarat, Rajasthan, North-eastern States and some parts of Uttar Pradesh. According to this practice an area covered with vegetation is burnt out to serve as manure. Cultivation is done for a year or two and then the area is abandoned. Another area is cleared in a similar manner and again abandoned. Vegetation regenerates in the abandoned area and after a lapse of 8 to 10 years, the area is again cleared and burnt and, thus, shifting cultivation is carried on. This cycle repeatedly goes on. Due to pressure on land this shifting cultivation has now been abandoned and the Tribes are settling to cultivate crops in fixed holdings.

Plight of the Tribes.

Detailed study in this behalf and of their exploitation has been conducted by sociologists and anthropologists, the foremost notable of them being Prof. C.V.F. Haimend'-of and Arher. Many others equally have evinced keen interest and investigated into living conditions of the tribes, their culture and customs, etc. which establishes that initially the tribals had held large tracts of lands as masters and had their own rich culture with economic status and cohesiveness as compact groups. The policy adopted by the rulers encouraged non-tribals to immigrate in large number and settle down in tribal areas. Governments compelled tribal Chieftains to permit non-tribals to take hold of revenue administration, which led to the slipping of lands from the hold of the tribes to the non-tribals. In the "Tribes of India - The Struggle for Survival", Prof. Haimendrof has graphi- cally explained diverse methods by which the tribals were deprived of their lands. Numerous methods adopted to exploit them having become un-bearable, they rebelled against their exploitation.

Inderelli (Andhra Pradesh) police firing in which hundreds of innocent tribals were killed, is one of the latest events which would depict the enormity of their exploita-tion. By laying the railway tracks and roads as means of communication by the British rulers, the tribal areas became accessible to the non-tribal immigrants who, with limited means, came in large number in search of livelihood and settled down in the agency areas and acquired large holdings by exploitation of the tribals. Dr. P.V. Ramesh, IAS, Director, Tribal Welfare in his article "Land Reforms Land Transfer in Scheduled Area" in a seminar organised by A.P. Judicial Academy and published by it as "Scheduled Tribal and Social Justice" page 178 at 202 has stated that in Utnoor Division of Adilabad District a tribal in whose name, 148 acres was recorded as owner, was declared as surplus land-holder under the Land Reforms Act and the only 5 acres of land in his actual possession and enjoyment was taken by the Government as surplus land. In contract, Izaradars surrendered Government land as they entered their names in revenue records as owners and claimed compensation under the Land Acquisition Act for 742 acres, The tribal economy was simple but with the gradual contact with the non- tribals they started taking loans. The wiles money-lenders and traders exploited their innocence. Honest, truthful and hard working tribals become pry for the greed and exploitation by non-tribals. They charged maximum rate of interest etc. for fringe money or gains or goods lent to them. Tribals had to repay disproportionately in three or four fold in kind. Exorbitant rate of interest was charged and repayment collected in kind, i.e., the produce in three or four-fold. In the "Land Alienation and Restoration in Tribal Communities in India" edited by S.N. Dubey and Ratna Murdia, (Himalaya Publishing House), compilation of articles presented and read out at a Seminar organised by Tata Institute of Social Science in which bureaucrats and social scientists participated. B. Danam, IAS, then Project Officer, ITDA Khammam, had highlighted in his paper about diverse modes of exploitation by money-lenders of the tribals in Andhra Pradesh. They were : short-term loan at an exorbitant rate of interest (Kandagutha), the repayment of which was made in kind, i.e., harvest produced from a particular extent of land; the medium-term loan on the security of the immovable property, repayable with compound interest at yearly or half- yearly rests. Third mode was lease of land against a loan for a fixed number of years (Tirumanam) during which period the tribals have to cultivate their land, raise the crop and deliver the entire produce to the money-lender; by usufructuary mortgage, the money-lender remains in possession and enjoys the produce from the land for a fixed number of years or till the principal sum is repaid; by advancing cash and kind loans (Namu) and lending commodities like foodgrains mostly for sustenance during the lean months or for seedlings, on the condition that the same would be repaid in full along with flat rate of interest at the time of harvest and in default payment should be with compound interest; in case of further default, the accumulated arrears get merged with the principal, i.e., by way of compound interest. The other types of money-lending extend to petty loans or selling clothes on credit to the tribals during the lean months on the condition that it would be paid in full at the time of harvest and in default the money-lender would take over the land by threat of physical force.

Legislative intervention - Enforcement ineffectiveness.

The Ganjam and Vizagapatnam Act of 1839 declared the Agency Areas of the Madras Presidency, comprising parts of southern Orissa and seven present Andhra Pradesh districts for special administration. In 1874, the Scheduled Districts Act XIV (Central Act) was passed. Thereunder, Scheduled districts were defined to mean the territories mentioned in the First Schedule and parts

thereof; they also include any other territory to which the Secretary of State for India by resolution in Council, may declare. Subsequently, the Act was extended to the Taluk of then Badrachalam in East Godavari District which is now a part of Khamman District together with the districts covered under 1839 Act. The provincial Government issued rules prescribing the procedure to be followed by the officers appointed thereunder to administer Agency Tracts. Later on, the Agency Tracts and Land Transfer Act 1 of 1917 came to be passed. Thereunder, to mitigate the hardships of the tribals from the wiles of money-lenders and other migrants from plain area, provision was made so that rate of interest would not exceeding 24% per annum and compound interest would not be charged nor any collateral advantage would be taken by the money-lenders. The total interest allowed or decreed should not to exceed the principal amount. The "Scheduled Districts" defined in 1874 Act were reconfirmed in 1917 Act. Section 4 thereof prohibited transfer of land in the Agency Tracts which read as under :

> "4. Transfer of Immovable property by a member of a hill tribe.
>
> (1) Notwithstanding any rule of law or enactment to the contrary, any transfer of immovable property situated within the Agency Tracts by the member of a hill tribe shall be absolutely null and void unless made in favour of another member of a hill tribe, or with the previous consent in writing of the Agent or of any other prescribed officer.
>
> (2) Where a transfer of property is made in contravention of sub-section (1), the Agent or any other prescribed Officer may on application by any one interested, decree ejectment against any person in possession of the property claiming under the transfer and may restore it to the transferor or his heirs.
>
> (3) Subject to such conditions as may be prescribed an appeal against a decree or order under sub-section (2) if made by the Agent shall lie to the Governor in Council and if made by any other officer shall lie to the Assistant Agent or to the Agent as may be prescribed. "Montague and Chaonsford Report, 1918 brief-ly touched the administration of tribal areas and political reform and excluded them from the reformed provincial Governments. Govt. of India Act, 1919 divided the area into two parts "wholly excluded and partially excluded areas for reform". The former were small and the latter were given joint responsibility of the Governor and the Government General in Council."

Montague Chaonsford Report of 1918 suggested that the backward area where primitive (tribal) live should be excluded from proposed politi-cal reform and administration was entrusted to the Governors of the Provinces.

Pursuant to Simon Commission Report, the Government of India Act, 1935 dealt with excluded and partially excluded areas as per Order 1936 issued under Section 91 of Government of India Act, 1935. Simon's Report is worth- extracting here and reads thus :

> "There were two dangers to which subjection to normal laws would have specially exposed these peoples, and both arose out of the fact that they were primitive people, simple, unsophisticated and frequently improvident. There was a risk of their agricultural land passing to the more civilized section of the population, and the occupation of the tribals was for the most part agricultural : and, secondly, they were likely to get into the "wiles of the moneylenders". The primary aim of Government policy then was to protect them from these two dangers and preserve their tribal customs; and this was achieved by prescribing special procedures applicable to these backward areas,"

Therein also, "Scheduled Districts" defined in 1874 Act were treated as excluded and partially excluded areas. The administration thereof was exclusively vested in the Governor of the Province under Section 92 of Government of India Act, 1935 sub-sections (1) and (2) which are relevant for our purpose read as under :

> "92. (1) The executive authority of a Province extends to excluded and partially excluded therein, but, notwithstanding anything in this Act, no Act of the Federal Legislature or of the Provincial Legis-lature shall apply to an excluded area or a partially excluded area, unless the Governor by public notification so directs, and the Governor in giving such a direction with respect to any Act may direct that the Act shall in its application to the area, or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit.
>
> (2) The Governor may make regulations for the peace and good government of any area in a Province which is for the time being an excluded area, or a partially excluded area, and any regulations so made may repeal or amend any Act of the Federal Legislature, or of the Provincial Legislature or any existing Indian Law, which is for the time being applicable to the area in question. Regulations made under this sub-section shall be submitted forthwith to the Governor General and until assented to by him in his discretion shall have no effect, and the provisions of this Part of this Act with respect to the power of His Majesty to disallow Acts shall apply in relation to any such regulations assented to by the Governor General as they apply in relation to Acts of a Provincial Legislature assented to by him."

The Government of India (Adoption of Indian Laws) Order, 1937 repealed 1874 Act and brought excluded and partially excluded areas directly under the governance of the Governor under Section 92 of the Government of India Act, 1935. Thus they became the Scheduled Areas by virtue of the Scheduled Areas (Part 'A' States) Order, 1950 issued by the President of India. After the Advent of the Constitution, Fifth and Sixth Schedules were engrafted as part of the scheme of the Constitution by the founding fathers. Fifth Schedule empowers the President of India who thereunder issued Scheduled Areas (Part 'A' States) Order, 1950 declaring specified areas therein to be Scheduled Areas within the States specified in Part 'A' of the First Scheduled to the Constitution of India. Therein also East Godavari, West Godavari and Visakhapatnam Agencies (Vizianagram and Srikakulam Districts are part of it) were declared to be Scheduled Areas in Madras Province.

Equally, by Scheduled Areas (Part 'B' States) Order, 1950 which became effective from December 7, 1950, the President exercised the power declaring certain specified areas as Scheduled Areas in Part 'B' States including the State of Hyderabad (Adilabad, Karimnagar, Nizamabad, Warangal, Khammam, Mehboob Nagar Districts).

It would, thus, be clear that right from the inception of the Colonial administration, the agency areas were treated distinctly from other areas. Tribals were protected from exploitation; their rights and title to enjoy the lands in their occupation and their autonomy, culture and ecology were preserved; infiltration of the non-tribals into tribals area was prohibited. Sugalis, i.e., Khanabadosh, non-tribals, by migration became in due course, tribals. Even those migrant non-tribals were prohibited to purchase the lands in agency areas from the tribals except with the prior sanction of the officer appointed by the Government in that behalf. However, with the connivance and fabrication of revenue records, non- tribals got hold of the lands and exploited the tribals.

Prof. Haimendrof has explained how notoriously the migrants swelled in number in the agency areas in Telangana of Andhra Pradesh and dispossessed the tribals from their holdings with impunity and prevented them from enjoying right over their lands or unlawfully dispos-sessed them in collusion with the Patwaris, Deshmukhs or Deshpandes, the lower level local officials. He has given the comparison of population at page 57 thus :

> "Despite all such obstacles the allocation of land to the tribals of Adilabad which began in 1944 made good progress. By 1945 a total of 45, 417 acres of land had been granted to 3, 144 tribals, and by 1949 the amount of land assigned on patta to tribals had risen to 160,000 acres and the number of beneficiaries to 11,198. The work continued until about 85 per cent of the tribal householders of Adilabad adequate holdings of cultivable land."

At page 59, he has stated that :

> "Visual impressions of the process of ethnic and cultural change are supported by demographic figures. While in 1951 the popula-tion of Utaur Taluk was only 34,404, the majority of whom were tribals, by 1961 it had risen to 55,099 and by 1971 to 93,823. No official census figures are available for later years, but according to a malaria survey of 1977 the population of the taluk had then reached a total 112,000. This phenomenal increase is clearly due to immigration, and all the new comers are non- tribals. The change in the composition of the population is reflected in the figures for tribals in individual circles. Thus in the Marlavai Circle, which in 1941 was almost totally tribal, the percentage of tribals in 1961 was still 90.38 per cent, but by 1971 it had dropped to 65.52 per cent, a figure which undoubtedly has diminished since then."

Narrating the event (after his revisit), he has stated at pages 59-60 thus :

> "On 7 December 1976, Kumra Boju of Kerimeri came to see me in Kanchanpalli and told me the following story :
>
> My father Somu owned fifteen acres of patta land, but for the last thirteen years Rama Gaudu of Asifabad (a man of toddy-tap-ping caste) has been cultivating this land. When my father died I was a small child, and Rama Gaudu occupied our land. Some time ago I applied to M. Narayan, the Special Dy. Collector, for res-toration of my father's land. The Dy. Collector decided the case in my favour and restored the land to me. I was very happy and ploughed the land in preparation for sowing jawari. But when I was ready to sow Rama Gaudu, supported by some villagers of Keslaguda, stopped my cultivating. Then the Tahsildar, the revenue inspector, and the Patel came to the village and told me that my father's land was mine by right. But at the same time they advised me not to cultivate that land, but to occupy instead of adjoining field which belongs to a Muslim. How could I do this? Then Rama Gaudu brought some men and sowed on my land. Moreover Rama Gaudu had reported to the police that I had illegally ploughed his land. So the Sub-inspector of police came to my house with some constables and wanted to arrest me. But in the end they did not take me to Asifabad. Rama Gaudu has occupied also the patta land of three other Gonds, who are my mother's brothers. They all died but they have sons who have a claim to their land. Now none of us has any land of our own because Rama Gadu has all of it taken away."

This is only a tiny iceberg of several instances. He has highlighted the gross injustice done to the tribals. The book contains full details which need no recounting here to avoid needless burden.

Dr. G.P. Reddy at pages 66-67 of his book "Politics of Tribal Ex- ploitation" has stated thus :

> "These non-tribal cultivator immigrants enjoyed liberal conces-sions. They were assigned land just for asking even waiving land revenue. Many of them were also conferred with right of Patel and Patwari. They were encouraged not only to establish now villages but also to settle in already well- established Goa villages. In this process the aboriginals gained nothing but became mute witnesses to the process set in by the rules which ultimately pauparised the tribals, turning them from land owners to agricultural proletariat."

Writing about the non-tribals acquiring interest in the land in the ribal areas of Adilabad, Sethumadhava Rao has stated that:

> "Where land outside the forest was vacant it was readily granted Patta to the non-tribals. The Gonds too had an opportunity of acquiring Patta rights in the land but they were slow to understand that they would suffer if they did not take advantage of these concessions. The new Watandars made a subtle use of their office as village headmen to evict the original possessors or take lands vacated by them for themselves." Another modus operandi for evicting the tribals who were cultivating

the lands was by treating them as Sivaijamabandi, i.e., treating as un-authorised occupants, A cultivator who held land under Sivaijamabandi tenure is liable to eviction at any time. The tribals who were owners under the law were treated as unauthorised occupants by manipulation of revenue records. The tribals who could not understand the meaning of Patta rights could not be expected to understand the meaning of Sivaijamabandi. In many cases, though tribals had been cultivating the lands for several decades and generations, they were purposefully categorised as Sivaijamabandi, and were evicted. Their lands were assigned to non-tribals. It is ridiculous even to classify the lands held by tribals as Sivaijamabandi just because these people lacked knowledge of the nature of their rights over their lands.

Traditionally, the tribals of the area acquired absolute right over the land for cultivation the day they started clearing new patches of forest. Prof. Haimendrof has narrated hundreds of such cases wherein the poor tribals had complained to him as to how they had lost their lands because of wrong and false entries made in the land records by the Patwaris. Even till recently, the records were not maintained properly. This gave scope for the manipulation both by the Patwaris as well as by the petty revenue officials. This manipulation of records took place mainly due to corrupt practices.

Dube's compilation gives first-hand account given by I.A.S. officers on the field representing Andhra Pradesh, Bihar, Gujarat, Maharashtra represented then by K. Padmanabhaiah, the present Home Secretary, Govt. of India, Orissa, M.P., Rajasthan and West Bengal and they had given graphic first hand account of the magnitude of the problems of land alienations, causes of exploitation. They pointed out urgent need for res-toration of the lands to the tribals. Dr. G. Prakash Reddy from ICSSR surveyed the problems once again and has graphically explained it in his "Politics of Tribal Exploitation" (Mittal Publication). "The Khonds and Jaungs in Andhra Pradesh, Hand Book for Development" by Dr. Ramakant Nath, B.M. Boal and N, Soreng tells the plight of, and the need for restitution of the land to and rehabilitation of, Orissa tribes. The Reports of the Commissioner of SCs. and STs., 1980-81 and 1984-85 also emphasise the urgency of the problem. As in the year 1995, in Andhra Pradesh, the non-tribals are in possession of 7,51,435,66 acres in scheduled areas of A.P. State (Vide page 192 of Scheduled Tribes and Social Justice). Like in Madras province, in Bihar, the Chota Nagpur Tenancy Act, 1908 prohibited transfer of lands by sale etc. except with the previous sanction of the Deputy Commissioner. The Bombay Province Land Revenue Code, 1879 also prohibited transfer of land from a tribal to a non-tribal without the permission of the District Collector. Similarly, the Chota Nagpur Tenancy Act, 1908, Santhal Pargana Tenancy (Supplemen-tary Provisions) Act, 1959 and the Bihar Scheduled Areas Regulations 1969 also prohibit the alienation of land of the tribals. These regulations also provide for restoration of alienated land to the tribals or when converted for urban use, to give them equivalent lands. As early as in 1901, in Gujarat, some measures of protection were provided (when it formed part of the Bombay Province) by amendment of Sections 73-A and

79-A in the Bom-bay Land Revenue Code, 1879, and imposed ban on transfer of land of tribes in those scheduled villages in which survey and settlement had not been introduced without previous permission of the Collector. The Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974 and the Maharashtra (Restoration of Lands to Scheduled Tribes) Act, 1974 also prohibit alienation and ensure restoration of alienated lands to the tribes. Dr. B.L. Maharda, IAS, a bureaucrat of Rajasthan Cadre, in his "History and Culture of Giriasias" of State of Rajasthan, has narrated the similar problems of tribals.

The Regulation prohibits absolutely the transfer of land in scheduled areas of Andhra Pradesh between tribals and non-tribals or non-tribals inter se. In 1971, an amendment was made to exempt hypothecation of lands by tribes to the Co-operative Land Mortgage Banks and other financial institutions approved by the Government, subject to certain conditions. In Assam, the Assam Land and Revenue Regulation Act, 1964 was enacted. In Himachal Pradesh, the H.P. Transfer of Land (Regulation) Act, 1968 was made. In Karnataka, the Bombay Tenancy and Agricultural Lands Act, 1948 was made applicable in Bombay region of the Karnataka State. The Mysore Land Revenue (Amendment) Rule, 1960 was suitably amended imposing restriction or alienation of the lands allotted to the Scheduled Tribes and Scheduled Castes without prior permission of the Government. In Kerala, the Kerala Land Reforms Act, 1963 contains similar provision. The Kerala Scheduled Tribes (Restriction of Transfer of Land and Res-toration of Alienation Lands) Act, 1975 was enacted for the same object which has recently been amended by a bill, details whereof are not avail-able. Madhya Pradesh, the M.P.L.P. Code, 1959, under Sections 165(6) and 168(1), prohibits alienation of land and remedy of restoration thereof is provided. In Manipur, the Manipur Land Reforms and Land Revenue Act, 1970 was made. Similarly, the Orissa Scheduled Areas (Transfer of Immov-able Property) Regulation and also Orissa Land Reforms Act, 1960 were made for the same purpose. The Rajasthan Tenancy Act, 1955, as amended in 1956, prohibits such transfer of lands. In Sikkim, Sikkim Revenue Order, 1977 and Sikkim Agricultural Land Ceiling and Reforms Act, 1977 are enforced. Equally, the Madras Cultivating Tenants Protection Act, 1955 provides the same relief. In Tripura, Tripura Land Revenue and Land Reforms Act, 1960 imposes similar restrictions. In Uttar Pradesh, the U.P. Land Laws (Amendment) Act, 1982 was made though its implementation was stayed by the High Court.

The above bird's eye survey discloses the enormity of the yawning gap between making of the Acts and their proper enforcement. The magnitude of the problem is of national importance which needs to be tackled and solved by Parliamentary law and effective enforcement.

As we have seen from the legislative history, from the beginning of the British rule in India, the Legislature has adopted the policy to exclude some areas totally and some partially from the governance through the Executive Council and given power to the Governor of the Province and the Governor General/Viceroy to administer them with their special responsibilities. The partially

excluded areas had the dual control by the Executive with primacy given to the Governor of the Province to apply or to exclude the application of the laws made by the legislature or the Executive Council to the partially excluded scheduled areas. In either event the object was to prevent the tribals to get into the wiles of the money-lenders and preservation of their property and customs and to allow the tribals autonomy of their living in accordance with their customs and culture. Until the Simon Commission, the legislative protection was not available in that behalf. The Simon Commission found it necessary to bring the tribals to the main-stream of national life. In consequence, tribal area was to be brought under the direct administration of the elected govern-ments by encouraging education, self-reliance and the provincial Govern-ment were to devote special attention for their upliftment. But the scheme was not given effect to in the Constitution of India Act 1935. As is seen Sections 91 and 92 of the Government of India Act and the Cabinet Mission Statement of May 16,1946 emphasised the special attention on the tribal.areas.

From this perspective, we are required to consider the debate in the Constituent Assembly and the draft statements by the two Committees, one for the North-east area now called Sixth Schedule and the rest of the areas covered under Fifth Schedule to the Constitution. The Draft Constitution on Fifth Schedule, presented by Dr. Ambedkar related to Draft Articles 215A and 215B making provision for the administration and control of scheduled areas and Scheduled Tribes. Emphasis was laid therein on the creation of the Tribal Advisory Council to assist the Governor or the Ruler of each State having schedul area therein, who are required to submit annual report to Government of India regarding the administration of scheduled area in that State, so that the executive power of the Union shall extend to that area to give directions to the State as to the administration of the said area. Draft Part II, clause 5 relates to law applicable to scheduled area and clause (a) of sub-clause (2) of Clause 5 postulated, prohibition or restriction on the transfer of land by or among members of the Scheduled Tribes in such area; clause (b) regulate the allotment of the land to members of the Scheduled Tribe in such area and clause (c) regulate by person who lend money to members of the Scheduled Tribes in such area. Sub- clause (3) of Clause 5 gives power to the Governor or Ruler to amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question. The draft report contained provision for allotment of the lands to the non-tribals. The report dated August 18, 1947 indicates that areas like the Madras and Orissa agency still need to be of simplified type which does not expose them to the complicated machinery of ordinary law course vide Shiv Rao's study. It is provided at pp. 755-56 thus : As regards the allotment of new land for cultivation or residence, however, "we are of the view that the interest of the tribal need to be safeguarded in view of the increasing pressure on land everywhere. We have proceeded accordingly that the allotment of vacant land belonging to the State in scheduled area should not be made except in accordance with special regulation made by the Government on the advice of the Tribal Advisory Council". In the joint report on the partially excluded areas other then Assam and North-east frontier dated August 25, 1947 the above finds place. As per the minutes of the advisory committee dated December 7, 1947 it was felt that the amendment should be made after discussion in the Constituent Assembly. In the revision of Articles qua allotment of land to non-tribals was retained. However, after authorisation given by the Constituent Assembly to make necessary restructuring to the Fifth Schedule as explained by Dr. Ambed- kar, the Draft was amended excluding all references to the allocation of land of tribals to the non-tribals with no amendment proposed by any member vide Vol. 9 C.A.D., pp. 965-1001.

It would, therefore, be seen that before the Draft Constitution be-came paramount law and the Fifth Schedule as its integral part, the members of the Constituent Assembly deliberated to protect land, the precious asset to the tribals, for their economic empowerment, economic justice, social status and dignity of their person by retention of the land with the tribals not only belonging to them but also allotment of the Government land. The proposal for allotment of the Government land to the non-tribals though was initially proposed but was ultimately dropped. After re- structuring Fifth Schedule, as presently found, the specific provision in the draft report to allot land to non-tribals was omitted which was accepted by the members of the Constituent Assembly without any demur or discussion.

The draft Constitution 1948, Clause (6) as originally proposed reads as under : "(1) alienation of allotment of land to non-tribals in Scheduled Areas, it shall not be lawful for a member of Scheduled Tribes to transfer any land in person who is not a member of the Scheduled Tribes; (ii) no land in scheduled area vested in the State within such area shall be allotted to person who is not a member of the Scheduled Tribes except in accord-ance with the rules made in that behalf by the Governor in consultation with the Tribal Advisory Council for the State." The text ultimately ap-proved by the Constituent Assembly as part of the Constitution reads as under:

> "(1) The Governor may make regulations for the peace and good government of any area in the State which is for the time being a scheduled area.
>
> (2) In particular and without prejudice to the generality of the foregoing powers, such regulations may : -
>
> (a) prohibit or restrict the transfer of a land by or among members of the Scheduled Tribes in such area;
>
> (b) regulate the allotment of land to members of the Scheduled tribes in such area;
>
> (c) regulate the carrying on of business as money-lenders by person who lend money to members of the Scheduled Tribes in such area."

It would, therefore, be clear from the narration of the Debates in the Constituent Assembly that various drafts were placed before the Con- stituent Assembly. Suggestions and ultimate approval of the Fifth Schedule, as extracted hereinbefore, would manifest the animation of the founding fathers that land in the scheduled area covered by the Fifth Schedule requires to be preserved by prohibiting transfers between tribals and non- tribals and providing for allotment of land to the members of the Scheduled Tribes in such area and regulating the carrying on of the business by money-landers in such area.

Constitutional Scheme to protect the Tribes Chapter VI, Part X of the Constitution deals with "Scheduled Tribes and Tribal Areas". Article 244 provides that the provision of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the State of Assam, Meghalaya, Tripura and Mizoram. The provision of Clause (2)

of Article 244- A are not relevant for the purpose of this case; hence omitted. The Fifth Schedule makes the provisions as to the administration and control of Scheduled Area and Scheduled Tribes. Para (1) envisages that unless the context otherwise requires, the expression "State" defined in the Schedule does not include the State of Assam, Meghalaya, Tripura and Mizoram. Part V of the Schedule gets attracted to its administration and control. Para (2) envisaged that subject to the provisions of the Scheduled, the executive power of a State extends to the Scheduled Areas enumerated therein. Special duty has been entrusted to the Governor to report to the President of the administration of scheduled area. It enjoins that the Governor of each State, having Scheduled Areas therein, shall annually, or whenever so required by the President, make a report to the President regarding the administration of the Scheduled Areas in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said area. Para 5(2} provides that the Governor may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area. Without prejudice to the above general power, special power has been conferred under clause (a) to prohibit or to restrict the transfer of land by or among members of the Scheduled Tribes in such area and under Clause (b) to regulate the allotment of land to members of the Scheduled Tribes in such area; under clause (c) regulates money-lending to the tribals in the Scheduled Area.

In the Constitution, the expression 'Scheduled Areas' has been defined to mean such area as the President may by order declare to be Scheduled Areas. Clause (2) of para 6 provides that the President may at any time by order

(a) direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area; (aa) increase the area of any Scheduled Area in a State, after consultation with the Governor of that State; (b) alter, but only by way of rectification of boundaries, any Scheduled Area; (c) on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State to be, or to form part of, a Scheduled Area, Clause (d) deals with the rescission of any order under para 6. Such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as aforesaid, the order made under sub-paragraph (1) of that paragraph shall not be varied by any subsequent order. Part D, para 7 empowers the Parliament to amend the Schedule by way of addition, variation or repeal of any of the provisions of the Fifth Schedule. Such a varied or modified Schedule shall be referred to such amended Schedule, The other details are not material for the purpose of this case. Hence they are omitted.

Scope and Sweep of the Regulation 1970.

As has been stated, the Regulation came into force on March 4, 1959 in Andhra area and in Telangana area with effect from December 1, 1963. The prior order in operation in Telangana area will be dealt with a little later. The material provisions relevant for the purpose are dealt with hereunder.

Section 2(a) defines 'Agency tracts' to mean the areas in the districts of East Godavari, West Godavari, Visakhapatnam, Srikakulam.Vizianagar, Adilabad, Nizamabad, Warangal, Khammam and

Mahaboobnagar declared from time to time as Scheduled areas by the President under sub-paragraph (1) of paragraph 6 of the Fifth Schedule to the Constitution. 'Scheduled Tribe' has been defined in Section 2(f) to mean any tribe or tribal community or part of or groups within any tribe or tribal community resident in the Agency tracts and specified as such by a public notification by the President under Clause (1) of Article 342 of the Constitution. Section 2(g) defines 'transfer' to mean mortgage with or without posses-sion, lease, sale, gift, exchange or "any other dealing" with immovable property, not being a testamentary disposition and includes a charge on such property or a contract relating to such property in respect of such mortgage, lease, sale, gift, exchange or other dealing. The definition of transfer is a comprehensively vide definition except testamentary disposi-tion by a tribal to another tribal so as to effectuate the prohibition of transfer of immovable property to any person other than a Scheduled Tribe or a Cooperative Society composed solely of members of the Scheduled Tribes.

Section 3(1) reads as under :

> "3. Transfer of immovable property by a member of a Scheduled Tribe -
>
> (l)(a) Notwithstandin anything in any enactment, rule or law in force in the Agency tracts any transfer of immovable property situated in the Agency tracts by a person. Whether or not such person is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of person, who is a member of a Scheduled Tribe or a Society, Andhra Pradesh Co-operative Societies Act 1964 (Act 7 of 1964) which is composed solely of members of the Scheduled Tribes.
>
> (b) Until the contrary is proved, any immovable property situated in the Agency tracts and in the possession of a person who is not a member of Scheduled Tribe, shall be presumed to have been acquired by person or his predecessor in possession through a transfer, made to him by a member of a Scheduled Tribes.
>
> (c) Where a person intending to sell his land is not able to effect such sale, by reason of the fact that no member of a scheduled Tribe is willing to purchase the land or is willing to purchase the land on the terms offered by such person, then such person may apply to the Agent, the Agency Divisional Officer or any other prescribed officer for the acquisition of such land by the State Government, and the Agent. Agency Divisional Officer or the prescribed officer as the case may be may by order, take over such land on payment of compensation in accordance with the prin-ciples specified in Section 10 of the Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961 (Act X of 1961) and such land shall thereupon vest in the State Government free from all encumbrances and shall be disposed of in favour of members of the Scheduled Tribes or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964) composed solely of members or in such other manner and subject to such conditions as may be prescribed."

Section 2 reads as under :

"2(a) Where a transfer of immovable property is made in con-travention of sub-section (i), the Agent, the Agency Divisional Officer or any other prescribed Officer may, on application by any one interested, or on information given in writing by a public servant, or suo motu decree ejectment against any person in possession of the property claiming under the transfer, after due notice to him in the manner prescribed and may restore it to the transfer of his heirs.

(b) If the transferor or his heirs are not willing to take back the property or where their whereabouts are not known, the Agency, the Agency Divisional Officer or prescribed officer, as the case may be may order the assignment or sale of the property to any other member of a Scheduled Tribe (or a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in the State) composed solely of members of the Scheduled Tribes, or otherwise dispose of it, as if it was a property at the disposal of State Government."

Section 4 reads as under :

"(4) For the purposes of this section, the expression 'transfer' includes a sale in execution of a decree and also a transfer made by a member of Scheduled Tribe in favour of any other member of a Scheduled Tribe benami for the benefit of a person who is not a member of a Scheduled Tribe; but does not include a partition or a devolution by succession." Section 3, therefore, prohibits transfer of immovable property by a member of the Scheduled Tribes to a non-Scheduled666 Tribe. Sub-section (l)(a) envisages, with a non obstante clause, that notwithstanding anything contained in any enactment, rule or law in force in the Agency tracts, any transfer of immovable property situated in the Agency tracts by a person, whether or not such person is a member of a Schedule Tribe, shall be absolutely null and void, unless such transfer is made in favour of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 and composed solely of members of the Scheduled Tribes. Clause (b) provides rule of evidence by way of presumption that until the contrary is proved, any immovable property situated in the Agency tracts and in the possession of a non-

Scheduled Tribe, shall be presumed to have been acquired by such person or his predecessor in possession, through a transfer made to him by a member of a Scheduled Tribe (emphasis supplied). The burden would always be on the non-tribal to prove that the Land in his possession was not acquired by transfer from a tribal; in other words, the land belongs to tribal and the non-tribal possesses it in contravention of law.

Clause (c) of Section 3 provides that if a non-schedule tribe, though intending to sell, is unable to sell his land on account of either unwillingness of other tribal to purchase the land or the terms offered by him to a tribe, are inaccessible to a tribal, he may apply to the agent named or other prescribed officer who would acquire the land and take over possession of such land on payment of compensation in accordance with the principles laid down in Section 10 of the Andhra Pradesh

Ceiling on Agricultural Holdings Act, 1961, as amended in 1972. Such land shall thereupon vest in the State Government free from all encumbrances and shall be disposed of in favour of members of the Scheduled Tribes or a Co- operative Society composed solely of members of the Scheduled Tribes or in such other manner and subject to such conditions as may be prescribed.

In case of any transfer made in contravention of sub-section (1) of Section 3, the agent, the Agency Division Officer, or any other prescribed officer, may, on an application by any one interested, or on information given in writing by a public servant.or suo motu, issue decree of ejectment against any person in possession of the property claiming under the transfer. This should be done after due notice to such person. Clause (b) of sub-section (2) of Section 3 provides that if a transferer or his heirs are not willing to take back the property or where whereabouts of the transferer are not known, the said officer may by order assign or sell the property to another member of the Schedule Tribe or a Co-operative Society. Sub- section 3(4) provides that for the purpose of Section 3(4), the expression 'transfer' includes sale in execution of a decree and also a benami transfer made by a member of a Scheduled Tribes in favour of any other member of the Scheduled Tribes but does not include a Partition or a devolution by succession.

Section 3-A makes special provision relating to mortgages without possession; the details thereof are not material. Section 4 provides for the remedy of suit to be instituted in the Agency Courts against the member of the Scheduled Tribe; the details thereof are not material. Section 5 provides for attachment and sale of immovable property. Section 6 gives revisional power to the State Government. Section 6-A provides for penal- ties for contravention of the provisions of the Regulation. Section 7 prescribes limitation for purpose of initiating proceedings under the Regulation. Section 8 gives power to the State Government to make rules. Section 9 provides for repeal of repugnant provisions of the Madras Act 1 of 1917, Section 10 provides for having of certain transfers and rights.

It is settled law that the transfer of immovable property between a member of the Scheduled Tribe to a Non-scheduled Tribe in the Agency tracts is null and void. The non-tribal transferee acquires no right, title and interest in that behalf in furtherance of such sale. This Court in Manchegowda & Ors. v. State of Kamataka & Ors., [1984] 3 SCC 301 had declared such sales to be voidable. In Lingappa Pochanna Appelwar v. State of Maharashtra & Anr., [1985] 1 SCC 479 this Court upheld the con- stitutionality of similar provisions of Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974.

When the constitutionality of Section 3 of the Regulation was im-pugned as violative of Articles 19(1) (f) and 14 of the Constitution, this Court, in P. Kami Reddy & Ors. v. State of Andhra Pradesh & Ors., [1988] 3 SCC 433 upheld its validity holdings that the Regulation aims to restore the lands to the tribals which originally belonged to them but passed into the hands of non-tribals. It would be unjust, unfair and highly unreasonable merely to freeze the situation, instead of reversing the injustice and rest oring the status quo ante. The non-tribal economic exploiters would get no immunity and not be accorded a privileged treatment by permitting them to transfer the lands and structures, if any, raised on such lands to non- tribals and to make profits at the cost of the tribals. Section 3, though it causes hardship to the non-tribals, equally, alleviates hardship of the tribals.

The Court must keep in mind the larger perspective of the interest of the tribal community in its entirety; the restrictions cannot be con- demned as unreasonable. The presumption embodied b Section 3(l) (b) is a rule of evidence. The non-tribals could be reasonably expected to disclose their title to the properties. The tribals due to handicaps and ignorance are unable to prove their right to land. The burden to prove title, therefore, was shifted to the non- tribals. The presumption was upheld as reasonable.

As a part of on-going industrial advancement, large industries or projects are being set up or constructed in the scheduled areas displacing the tribals and rendering them impoverished landless labourers. When their lands are acquired for public purpose, the Government should give alternative lands for rehabilitation and easy loans for reclamation. Law relating to prohibition of alienation and restoration of lands to tribes must be simple, less cumbersome and result-oriented. The machinery must be speedy and the officers must have compassion and sense of dedication and direction to ameliorate the economic status of the tribes to assimilate them into national main-stream.

In Telangana area of the State of Andhra Pradesh, prior to the Regulation and pursuant to Part B State Regulation in Fifth Schedule, the AP Tribd Area Regulation, III of 1359F promulgated by Raj Pramukh of Hyderabad was in vogue, Section 46 of Agricultural Land and Tenancy Act, 1950 prohibits transfer of agricultural land without sanction of the competent authority. Section 3 of the Tribal Area Regulation excludes the application of any Act, Regulation or Rules by a notification published in the official Gazette. Section 4 gives power to the Government to make Rules. Sub-section (2) of Section 4 prohibits eviction of tribals from the lands in their possession or occupied by them. Clause (f) prohibits grant of patta rights over any land in notified area to a non-tribal; the agent is empowerend to cancel such transfer or revise any title of land granted to a non-tribal in any notified tribal area. Clause (g) prohibits sale b execution the named or nominated Government agent etc. who would purchase it in the prescribed manner under the Regulation and assign it on to a tribal. The Andhra Pradesh High Court had held that the transfer of land in Scheduled Area by a tribal given to either a Scheduled Caste or a Backward Class settled in Agency tracts as void.

In P. Rami Reddy's case, this Court had observed thus :

> "Within the scheduled areas of both Telangana and Andhra regions the land was entirely in occupation of different tribal communities. The area was an inaccessible tract of land covered by forests and hills. These tribal communities were in occupation of lands and lived by shifting cultivation and gathering whatever produce that was available.
>
> The non-tribals who arrived in these areas late in the 19th Century in certain areas and the early 20th Century in certain other areas found the tribals who were in occupation of these lands an easy pray for the schemes of exploitation. The non-tribals were lending money to the tribal communities and taking the land belonging to them as security though nothing was taken in writing from a tribal. The

rates of interest charged ranged between 25 to 50 per cent and in certain cases even 100 per cent. The tribals who were traditionally honest and who were simple in their thought and habits fell an easy prey to the schemes of the non-tribals. It was observed by several committees that the non-tribals were able to find ways and means to circumvent the provisions of Regulation 1 of 1959 by entering into benami transactions and other clandestine transactions with unsophisticated tribals. It is absolutely necessary to create conditions for peace and maintain peace and prevent the new non- tribals from settling down in the scheduled area. If the alienations are permitted to the non- tribals there is a danger of large-scale exploitation by the new non- tribals again with the result peace will be disturbed in that area.

Unless new enterants into the scheduled areas are prevented from settling down in the scheduled areas by purchasing properties either from tribals or non-tribals, it is not possible to prevent the exploitation of the unsophisticated tribals. It is only with a view to ment of Scheduled Tribes? Would it be permissible to construe that the land belonging to the Government is outside such control or prohibition or restriction; whether the State Government could allot its land to non-tribals in violation of the Constitution and the law? Answer to these crucial questions bears paramount significance and impact since the object of the founding fathers of the Constitution in empowering the Governor, on the basis of his personal satisfaction, is to regulate by law the administration or control of the Scheduled area for peace and good governance of the Scheduled Tribes in the area. The question is : whether any contra inter-pretation would subserve the Constitutional animation or would it frustrate the constitutional objective? The Division Bench of the High Court in Samatha's case relied upon the dictionary meaning of the word 'person' and the prohibition on transfer of land inter vivos between natural persons of Scheduled Tribes and non-tribes in Agency tracts ; it came to conclude that the Regulation does not apply to the land owned by the State Govern-ment since the State Government is not a natural person, The earlier Division Bench had taken contra view. The question, therefore, is : which of the two views subserves the constitutional purpose and is correct in law?

Meanings of the word 'Person' - whether Government is persona ficta?

From this perspective, the next question that arises is : whether the State Government is a person within the meaning of Section 3 of the Regulation and whether its transfer of land to non- tribals or company is valid in law?

The word 'person' in the interplay of juristic thought is either natural or artificial. Natural persons are human beings while artificial persons are Corporations. Corporations are either Corporation aggregate or Corpora-tion sole. In "English Law" by Kenneth Smith and Denis Keenan (Seventh Edition) at page 127, it is stated that "(L)egal personality is not restricted to human beings. In fact various bodies and associations of persons can, by forming a corporation to carry out their functions,

create an organisation with a range of rights and duties not dissimilar to many of those possessed by human beings. In English law such corporations are formed either by charter, statute or registration under the Companies Acts; there is also the common law concept of the Corporation Sole". At page 163, it is further stated that "(T) he Crown is the executive head in the United Kingdom and Commonwealth, and government departments and civil servants act on behalf of the Crown", In "Salmond on Jurisprudence" by P.J. Fitzgerald (Twelfth Edition), at page 66, it is stated that "(A) legal person is any subject- matter other than a human being to which the law attributes personality. This extension, for good and sufficient reasons, of the concep-tion of personality beyond the class of human beings is one of the most noteworthy feats of the legal imagination....". At page 72, it is further amplified that "(T)he King himself, however, is in law no mere mortal man. He has a double capacity, being not only a natural person, but a body politic, that is to say, a corporation sole. The visible wearer of the crown is merely the living representative and agent for the time being of this invisible and underlying persona ficta, in whom by law the powers and prerogatives of the government of this realm are vested". In "Jurisprudence" by R.W.M. Dias (Fifth Edition), at page 265, it is stated that".... the value of personifying group activities is further reduced by the fact that courts have evolved ways of dealing with such activities without resorting to the device of persona".

In Madras Electric Corporation v. Boarland, (1955) 1 All ER 753, relied upon by Shri Dhawan, it has been held that the word 'person' in its ordinary and natural sense includes crown. The same view was reiterated in I.R. Commissioner v. Whiteworth Coal Co. Ltd., (1968) 2 All ER 91 at 108. On the concept of "legal personalityT and the concept of "person", in "Elementary Principles of Jurisprudence" by Keeton (1949 Edition) relied on by Shri Rajeev Dhawan, in Chapter XIII at page 150, it is stated that in modern law, this personification by law is confined to certain definite limits, although this restriction is based, not upon principle, but upon convenience. In law, however, we are concerned with legal persons, whether they are natural, i.e., human beings capable of sustaining rights and duties, or artificial or juristic, i.e., g.oups or things to which the law attributes the capacity to bear rights and duties. Legal personality is itself nothing but a fiction, in so far as it is intended to imply no more than that a legal person is simply a complex of legal rights and duties. At page 151, it is stated that juristic persons may be defined as those persons or groups of persons which the law deems capable of holding rights and duties, with a few exceptions. At page 152, he has amplified that corporation sole is a juristic person and it succinctly describes the position in modern English law. The conception of separate personality attaching to the successive occupants of a particular office is as valid juristically as the conception of incorporation of the members of a group. The Law of Property Act, 1925, Section 180 contents itself with addition briefly, that a corporation sole may now hold personal property with rights and duties. At page 154, it is stated that principles applying to corporation aggregate are not fully applicable to corporation sole. "Court regarded the corporation sole not as a person, but as a device for the transmission of rights from one natural person to another". He quotes Blackstone : that "corporation sole consists of one person only and his successors, in some particular station, who are incor-porated by law, in order to give them legal capacities and advantages, in particular that of perpetuity, which in the natural persons could not

have had. In this sense the King is a corporation sole". At page 155, it is further stated that the law, therefore, has wisely ordained, that the person, qua tenus person, shall never die, any more than the King; by making him and his successors a corporation sole. By which means all the original rights of a personage are preserved entirely to the successors. At page 169, it is stated that the reason for King personality, a corporate sole, is that corporate personality is a technical device, applied for a multitude of very diverse aggregations, institutions and transactions, whereas each of many theories has been conceived for a particular type of juristic personality. None of them foresaw the extent to which the device of incorporation would be used in modern business, or we may add, to cloak the activities of some branch of Government.

Thus, in Great Britain, Crown has been regarded as a Corporation sole, persona ficta so that it has never been considered necessary to personify the State. The Crown in its political represents the State in England and can sue in the English courts as a person. In Madras Electric Corporation case, the same view was reiterated but when liability was sought to be imposed upon a person, it was held that the general principle of person, does not include the Crown, unless the statute is binding on the Crown, by express provision or by necessary implication. As held in I.R. Commissioner v. Whiteworth Coal Co. Ltd., (1968) 2 All ER 91 at 108, in a taxing statute it was held that there was no objection to interpret the word 'person' to include the Crown in any provision other than those which seek to impose a burden.

In the American Jurisprudence 2nd Series, Vol. 72, page 407, it is stated that a State, in the ordinary sense of the Federal Constitution, is a political community of free citizens, occupying a territory of defined boundaries, and organised under a government sanctioned and limited by a written constitution, and established by the consent of the governed. While the municipal corporation is organised under the authority of a state legislature and draws its public character from the law of the state creating it, it is endowed with a public character by virtue of having been invested by the legislature with subordinate legislative powers to administer local and internal affairs of the community, as well as by having been created as a branch of the state government to assist it in the civil government of the State. A public corporation, \vith capacity to sue and be sued, under modern statutory provisions, is a legal person. So also, for purposes of convenience, certain Departments of Government or the board of managers of a public institution are sometimes incorporated, but the corporations thus created, although public, are not municipal corporations. In Black's Law Dictionary, Sixth Edition, Page 675, the word "Government" has been defined thus :

> "From the Latin gubernaculum, signifies the instrument, the helm, whereby the ship to which the state was compared, was guided on course by the "gubernator" or helmsman, and in that view, the government is but an agency of the state, distinguished as it must be in accurate thought from its scheme and machinery of govern-ment.
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> In the United Slates, government consists of the executive, legislative, and judicial branches in addition to administrative agen-cies. In a broader sense, includes the federal government and all its agencies and bureaus, state and county governments, and city and township governments.

> The system of polity in a state, that form of fundamental rules and principles by which a nation or state is governed, or by which individual members of a body politic are to regulate their social actions. A constitution, cither written or unwritten, by which the rights and duties of citizens and public officers are prescribed and defined, as a monarchical government, a republican government, etc. The sovereign of supreme power in a state or nation. The machinery by which the sovereign power in a state expresses its will and exercises its functions, or the framework of political institutions, departments, and officers, by means of which the executive, judicial, legislative, and administrative business of the state is carried on."

In Edgar B. Sims. v. United States of America, (359 US 108 : 3 L ed 2d 66), Federal tax authorities issued notices of levy of tax for assessment on unpaid income of employees of the State of West Virginia, and had the notice served on the defendant. The State auditor, seized the accrued salaries of the taxpayers pursuant to Sections 6331 of the Internal Revenue Code of 1954. The defendant-State refused to honour the levy and instead, delivered payroll warrants to the taxpayers for their, then accrued salaries. Thereafter, the Government brought the action in the District Court for the Southern District of West Virginia to recover from defendant the amount of salaries he had so paid to the taxpayer in disobedience to the Government's levies. The District Court upheld the Government's order. The Court of Appeals, on appeal, affirmed it. On a writ of certiorari, it was held by the Supreme Court of USA that the levy of tax made under Section 6331 was authorised levy and that defendant under Section 6332 of the Internal Revenue Code of 1954 as 'person' was liable to pay the same.

In State of Ohio v. Guy T. Helverirtg, (292 US 360 : 78 L ed 1307 at 1310) the question was whether "the State", when it was selling liquor through its agency and sources, "was a person" within the meaning of U.S.C. title 26, Section 205 (Section 3244, as amended)? It was held at page 1310 that the tax is levied upon every person who sells liquor etc. The word 'person' as used in the title, should be broadly construed as to mean and include a partnership, association, company or corporation, as well as a natural person. Whether the word 'person' or 'corporation' includes a State or the United States depends upon the connection in which the word is found. In South Carolina case, the United States Court disposed of the question by holding that since the State was not exempt from the tax, the statute reached the individual sellers who acted as dispensers for the State. While not rejecting that view, the Court preferred to place on the word 'person' the broader ground that when the State itself becomes a dealer in intoxicating Liquors, it falls within the reach of the tax either as a 'person' under the statutory extension of that word to include a corporation, or as a 'person' without regard to such extension.

In State of Georgia v. Hiram W. Evans, (316 US 159 : 86 L ed 1346) the same view was reiterated by the U.S.A. Supreme Court and it was held that if the word 'person' is to include a State as plaintiff, it must equally include a State as a defendant or else the language used would be meaningless.

In United States of America v. Cooper Corporation et al, (312 US 600: 85 L ed 1071) relied on by Sri Sudhir Chandra, considering the word 'person' used in Sections 7, 85 and 178 of the Sherman Anti Trust Act, it was held that although the term "person", as used in a statute, is not ordinarily

construed to include the sovereign, this is not a hard and fast rule of exclusion, but may be negatived by resort to aids to construction indicating a contrary intent. On the facts, it was held that State was not a person. In that context it was held that in the absence of any indication to the contrary, the term 'person', when used in different sections of a statute, was employed throughout the statute, in the same, and not different sense. But the said decision was reversed in State of Georgia case. In United States v. I.C.C., (1949) 337 U.S. 426 it was held that when relief is sought against State itself, the word 'person' would include the State and be construed accordingly.

In Superintendent & Legal Remembrancer, State of West Bengal v. Corporation Calcutta, [1967] 2 SCR 170 a Bench of nine Judges of this Court was to consider whether the State of West Bengal, when it was carrying on trade, as owner and occupier of the market at Calcutta, without obtaining the licence, was bound by the Calcutta Municipality Act or, by necessary implication, was exempted to obtain licence. A complaint against the State, for its failure to obtain licence was filed by the Municipal Corporation. It was contended that the State is not a person under Section 218 of the said Act. Per majority, it was held that the Common Law rule of construction that the Crown is not, unless expressly named or clearly intended, bound to be a State, was held to be not acceptable as a rule of construction. It was held that the archaic rule based on prerogative and protection of the Crown has no relevance to a democratic republic. It is inconsistent with the rule of law based on the doctrine of equality and introduces conflicts and anomalies. The normal construction, viz., that an enactment applies to citizens as well as to the State, unless it expressly or by necessary implication exempts the State from its operation, steers clear of all the anomalies and is consistent with the philosophy of equality enshrined in the Constitution. Under the Act there is a distinction between fine imposed under Section 537 and under Section 541 of the Act, the fines under Section 537 are in respect of offences enumerated therein they certainly go to the coffers of the States. In respect of such offences it may be contended that, as the fines paid reach the State itself, there is an implication that the State was not bound by the Sections enumerated therein, for a person who receives the fine, cannot be the same person who pays it. This incongruity may lead to the said necessary implication. Another Bench of nine Judges in State Trading Corporation of India Ltd, v. The Commercial Tax Officer & Ors., AIR (1963) SC 1811 at 1817 per majority interpreted the word 'citizen' in a broader perspective. In Union of India v. Jubbi, AIR (1968) SC 360 at 362 a three-Judge Bench had held that a statute applies to State as much it does to a citizen, unless, it expressly or by necessary implication, exempts the State from its operations. If the Legislature intended to exclude the applicability of the Act to the State, it could have easily stated in Section 11 itself or by a separate provision that the Act was not to be applied to the Union or to the lands held by it. In the absence of such a provision, in a constitutional set up like the one we have in this country, and of which the overriding basis is the broad concept of equality, free from any arbitrary discrimination, the presumption would be that a law of which the avowed object is to free the tenant of landlordism and to ensure to him secuhty of tenure would bind all landlords irrespective of whether such a landlord is an ordinary in-dividual or the Union. In that case, it was contended that Abolition of Big Landed Estates and Land Reforms Act, 1953 and Section 11 thereof does not apply to the land held by the Government. This Court rejected that contention. It would, therefore, be settled law that the question whether or not the word 'person' used in a statute would include the State has to be determined with reference to the provisions of the Act, the aim and its object and the purpose the Act seeks to subserve. There is no reason to consider the word 'person' in a narrow sense. It must be

construed in a broader perspectivity, unless the statute, either expressly or by necessary implication, exempts the State from the operation of the Act as against the State and would include "State Government".

Property of the State - how dealt with under the Constitution.

Part I of the Constitution of India deals with Union and its territories. Article 1 declares that India, that is Bharat shall be a Union of States. The States and the territories thereof have been specified in the First Schedule to the Constitution. The territory of India shall comprise of -

(a) the territory of States; (b) the Union territories specified in the First Schedule; and (c) such other territories as may be acquired. Articles 2 to 4 deal with the power of the Parliament to admit into the Union, by law, any State, or establish new States on such terms and conditions as it thinks fit. Formation of the new States and alteration of areas, boundaries and names of the existing States are regulated by law made by Parliament. It also gives power to the Parliament to amend the First and the Fourth Schedules and to provide for supplemental, incidental and consequential matters. The First Schedule enumerates the States and the first in the alphabetical order is Andhra Pradesh with territories specified thereunder.

Under Part VI of the Constitution titled "The States", Article 152 defines "State". For the Interpretation of the Constitution, by operation of Article 367, unless the context otherwise requires or modifies, the General Clauses Act shall apply. Section 3(23) thereof defines Government to include both the Central Government and State Government. Section 3(8) defines "Central Government" and Section 3(60) defines "State Government"

> as regards anything done and or to be done, shall mean the Governor. The Governor of each State is its Executive Head and the executive power of the State shall be exercised by the Governor either directly or through officers subordinate to him in accordance with the Constitution as envisaged under Article 154. The executive power of the State, subject to the provisions of the Constitution, by operation of Section 162, shall extend to the matters with respect to which the Legislature of the State has power to make laws. The proviso thereto is not relevant for the purpose of this case.
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> The executive power, therefore, of the State is co-extensive with that of the legislative power of the State. The Governor shall appoint the Chief Minister and on his advise, he appoints the Council of Ministers, who shall aid and advise the Governor in the exercise of his function except, in so far as he is, by or under the Constitution, required to exercise his functions or any of them, in his discretion. The Council of Ministers, headed by the Chief Minister, shall be collectively and individually responsible to the Legislature and the people in the matter of the governance of the State. All executive actions of the Government of a State, shall be expressed to be taken in the name of the Governor and the business of the Government is conducted in accordance with Article 166 and the Business Rules made, by the Governor, by clause (3) thereof.

Under Chapter III of Part XII, Article 294 vests in the union and the corresponding State all property and assets which immediately before the commencement of the Constitution were vested in His Majesty for the Purposes of the Government of Dominion of India or of each Governor's Province, whether arising out of any contract or otherwise; similarly all rights, liabilities and obligations, respectively of the Government of the Dominion of India and of the Government of each corresponding State, shall belong to the Government of India and the Government of each corresponding State. Article 295 provides for succession to the property, assets, rights, liabilities and obligations in other cases. Article 298 provides that the executive power of the Union and of each State shall extend to the carrying on of any trade or business, and to the acquisition, holding and disposal of properly and the making of contracts for any purpose co-extensive with legislative power. The Union of India and each State under Article 300 may sue or be sued, with all rights and liabilities as a constituent power of the State under the Constitution. Article 299 empowers Union of India and the Government of each State to enter into contract, in the exercise of the executive power, to be expressed in the name of the president or the Governor, as the case may be. All assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor, by such persons and in such manner as he may direct or otherwise. However, the President or the Governor shall not be personally liable therefor. Article 300 is of material importance. As stated earlier, the Government of India or a State may sue or be sued, by the name of the State and subject to the provisions of the Constitution and the law enacted and by virtue of the power conferred by the Constitution, it can sue and be sued in relation to their respective affairs in the like cases.

The members of the Legislature are elected by the people periodically at the end of every five years. The political party or group of political parties who secure majority in the Legislative Assembly of the State elects the leader who would be called upon by the Governor to form the Govt. and on his appointment as the Chief Minister, On his advise, the Governor appoints his Council of Ministers who act in collective responsibility to aid and advise the Governor in the governance of the State during the tenure of their office. Permanent bureaucracy acts as an arm of the Government.

Articles 309 to 312A in Chapter I of Part XIV under the heading "Services under the Union and the States" regulate the recruitment and conditions of service and appointments to the public services and posts in connection with the affairs of the Union or the States, subject to the provisions of the Constitution and acts of the appropriate Legislature. Details thereof are not material for the purpose of this case; suffice it to state that Constitution has created permanent bureaucracy consisting of diverse all India services allotted to various States and State Services created thereunder, to assist the political executive and to implement the provisions of the Constitution, the laws and the executive policy of the appropriate Government. Under the Constitution, in all ordinary matters of administration, the Ministers take full responsibility, subject to the control by the Legislature. The bureaucracy gives

shape to the decisions taken by the council of Ministers at the Cabinet meeting or by the individual Ministers by working out the details and they are applied in the given set of facts. In Halsbur's Laws of England (4th Edn.) Vol. 8 in paragraph 1152 at page 711, it is stated that the Government offices and departments through which the general executive administration of the country is carried on owe their establishment and organisation, together with the powers they possess and duties they perform, partly to the royal prerogative and partly to the Parliament, They derive almost all their powers directly or indirectly from Parliament, which alone can provide them with the supplies of money, necessary for their operations. Their internal arrangements, on the other hand, are hardly ever organised or directly interfered with by Parliament, but have been a matter for the royal prerogative. This principle proprio vigore applies to Cabinet form of functioning under our Constitution. In paragraphs 1155 at page 713, it is further stated that where functions entrusted to a minister or to a depart- ment are performed by an official employed in the ministry or department there is in law no delegation because constitutionally the acts or decisions of the officials are that of the Minister. In the exercise of their functions relating to land under any enactment, every Minister and government department must have regard to the desirability of conserving the natural beauty and amenity of the countryside.

Ministerial Responsibility.

As stated hereinbefore, the Constitution envisions to establish an egalitarian social order rendering to every citizen, social, economic and political justice in a social and economic democracy of that Bharat Republic. Article 261(1) of the Constitution provides that full faith and credit shall be given, throughout the territory of India, to public acts, record and judicial decisions of the Union and of every State. In Secretary, Jaipur Development Authority v. Daulat Mal Jain, [1997] 1 SCC 35, a Bench of this Court had held thus ;

"The Governor runs the Executive Government of a State with the aid and advice of the Chief Minister and the Council of Ministers which exercise the powers and performs its duties by the individual Ministers as public officers with the assistance of the bureaucracy working in various Departments and Corporate sectors etc. Though they are expressed in the name of the Governor, each Minister is personally and collectively responsible for the actions, acts and policies. They are accountable and answerable to the people. Their powers and duties are regulated by the law and the rules. The legal and moral responsibility or liability for the acts done or omissions, duties performed and policy laid down rest solely on the Minister of the Department, Therefore, they are indictable for their conduct or omission, or misconduct or misap-propriation. The Council of Ministers are jointly and severally responsible to the Legislature. He/they, is/are also publicly ac-countable for the acts or conducts in the performance of duties.

The Minister holds public office though he gets constitutional status and performs functions under Constitution, law or executive policy. The acts done and duties performed are public acts or duties as holder of the public office. Therefore, he owes certain accountability for the acts done or duties performed. In a democratic society governed by rule of law, power is conferred on the holder of the public office or the concerned authority by the Constitution by virtue of appointment. The holder of the office, therefore, gets opportunity to abuse or misuse of the office. The politician who holds public office must perform public duties with the sense of purpose, and a sense of direction, under rules or sense of priorities. The purpose must be genuine in a free democratic society governed by the rule of law to further socio-economic democracy. The executive Government should frame its policies to maintain the social order, stability, progress and morality. All actions of the Government are performed through/by individual persons in collective or joint or individual capacity. Therefore, they should morally be responsible for their actions.

When a Government in office misuses its powers, figuratively, we refer to the individual Minister/Council of Ministers who are constituents of the Government. The Government acts through its bureaucrats, who shapes its social, economic and administrative policies to further the social stability and progress socially, economically and politically. Actions of the Government, should be accounted for social morality. Therefore, the actions of the individuals would reflect on the actions of the Government. The actions are intended to further the goals set down in the Constitu- tion, the laws or administrative policy. The action would, therefore, bear necessary integral connection between the 'purpose' and the end object of public welfare and not personal gain. The action cannot be divorced from that of the individual actor. The end is something aimed at and only individuals can have and shape the aims to further the social, economic and political goals. The ministerial responsibility thereat comes into consideration. The Minister is responsible not only for his actions but also for the job of the bureaucrats who work or have worked under him. He owes the responsibility to the electors for all his actions taken in the name of the Governor in relation to the Department of which he is the head."

In Shamsher Singh v. State of Punjab & Anr., [1974] 2 SCC 831, a Bench of seven Judges of this Court had held that under the Cabinet System of Government as embodied in our Constitution, the Governor is the Formal head of the State. He exercises all his powers and functions conferred on him by or under the Constitution, on the aid and advice of his Council of Ministers, save in spheres where the Governor is required by or under the Constitution to exercise his function in his discretion. The satisfaction of the Governor for the exercise of any power or function, required by the Constitution, is not the personal satisfaction of the Gover-nor but is the satisfaction in the constitutional sense under the Cabinet System of Government. The executive is to act subject to the control of the legislature. The executive power of the State is vested in the Governor as head of the Executive. The real executive power is vested in the Ministers of the Cabinet. The Chief Minister and the Council of Ministers with the Chief Minister as its head aid and advise the Governor in the exercise of his executive functions. The same principle was reiterated by a Bench of three Judges in

UK. Jain v. Union of India, [1995] 4 SCC 119. Therein, it was held that in a democracy governed by rule of law, State is treated on par with a person by Article 19(6) in commercial/industrial activities.

It would thus be clear that in a democratic polity governed by the rule of law, the administration is run through constitutional mechanism i.e., Cabinet form of Govt. by a Council of Ministers headed by the Chief Minister. They aid and advise the Governor, the executive head of the State. The bureaucracy - an arm of the political executive - assists as an integral part of administrative mechanism. Their actions or the acts, individually or collectively, are directed to elongate and fulfil the socio-economic goals set down in the Constitution to establish the egalitarian social order in which socio-economic justice is secured to the poor and weaker sections of the society including the Schedule Castes and Scheduled Tribes, in particular, as enjoined in Article 46 of the Constitution, to promote their socio-economic interest and protect them from social injustice and all forms of exploitation. The State is, therefore, a "person" within the constitutional mechanism persona ficta is enjoined to elongate the objects of the Constitution.

Scope of the power of the Govt. in disposal of its property in Scheduled area and constitutional duty and limitation of the State.

In "In the Framing of the India's Constitution", a study by B. Shiva Rao, (Volume n) in Chapter 20 on the Fifth Schedule of the Constitution on the Tribal Area, the author has surveyed the historical background for integration of Scheduled Tribes into the national mainstream. The histori- cal survey and legislative development do assure us that throughout.....A system of modified exclusion of law was applied to the Scheduled areas. The power was with the Governor. He exercises the executive and legislative power to apply, or to refrain from applying any law made by Parliament or State Legislature to the Agency tracts. The object of Government policy is to protect the tribals or their land..... by securing to them protection from exploitation. The principal duty of the administration is to protect them from exploitation. Considering the past experience and the exploitation of the tribals' simplicity and truthfulness by the non- tribals, it became imperative by statutory safeguards to preserve the land which is their natural endowment and mainstay for their economic empowerment. No laws affecting social matters, occupation of land including tenancy laws allotment of land and setting apart of land for village purposes and village management, including the establishment of village panchayats, would apply, unless they are suitable to the conditions. Shiva Rao has stated at page 579 thus :

> "The transfer of land in a Scheduled Area from a tribal to a non-tribal was forbidden; and the State Government was also prohibited from allotting State land in a Scheduled Area to non-tribals except in accordance with rules made after consulting the Tribes Advisory Council. Likewise, if advised by the council, the Governor was obliged to license money-lending, prescribing such conditions as were considered necessary; and the breach of these conditions would be an offence. In order that public attention must be focussed on the development work carried out in these areas, the State Government was required to show separately in its annual financial statement the revenues and expenditure pertaining to these areas."

Thus, the Fifth and Sixth Schedules an integral scheme of the Con-stitution with direction, philosophy and anxiety is to protect the tribals from exploitation and to preserve valuable endowment of their land for their economic empowerment to elongate social and economic democracy with liberty, equality, fraternity and dignity of their person in our political Bharat.

Egalitarian Social Order - Scope and Content, Justice is an attribute of human conduct. Law, as a social engineer-ing, is to remedy existing imbalances, as a vehicle to establish an egalitarian social order in a Socialist Secular Bharat Republic. The Upanishad says that, "let all be happy and healthy, let all be blessed with happiness and let non be unhappy". Bhagwatgeeta preaches through Yudhishtra that, "I do not long for kingdom, heaven or rebirth, but I wish to alleviate the suffer-ings of the unfortunate'. Prof. Friedlander in his "Introduction of Social Welfare" at page 6 states that social welfare is the organised system of social service and institutions are designed to aid individuals and groups to attain specified standard of life and health and personal and social relationship which permit them to develop their full capacities and to promote their well-being in harmony with the needs of their families and the community. Welfare State is a rubicon between unbridled individualism and communism. All human rights are derived from the dignity of the person and his inherent worth. Fundamental Rights and Directive Prin-ciples of the Constitution have fused in them as fundamental human rights as indivisible and inter- dependent. The Constitution has charged the State to provide facilities and opportunities among the people and groups of people to remove social and economic inequality and to improve equality of status. Article 39(b) enjoins the State to direct its policy towards securing distribution of the ownership and control of the material resources of the community as best to subserve the common good. The founding fathers with hind sight, engrafted with prognosis, not only inalienable human rights as part of the Constitution but also charged the State as its policy to remove obstacles, disabilities and inequalities for human develop-ment and positive actions to provide opportunities and facilities to develop human dignity and equality of status and of opportunity for social and economic democracy. Economic and social equality is a facet of liberty without which meaningful life would be hollow and mirage.

Right to development - a fundamental right.

Declaration of "Right to Development Convention" adopted by the United Nations and ratified by India, by Article 1 "right to development'' became part of an inalienable human right. By virtue thereof, every human person and ail people are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms would be fully realised (emphasis sup- plied). Clause (2) thereof provides that "the human right to development also implies the full realisation of the right of the people to improve their natural wealth and resources". Article 2(1) provides that "the human person is the central subject of development and should be and active participant and beneficiary of the right to development". Clause (2) says that all human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure free and complete fulfilment of the human being and they should, therefore, promote and protect an appropriate political, social and economic order for development". Clause (3) thereof provides that the State

have "the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom".

Article 3(1) recognises and enjoins that it is the State's primary responsibility to create conditions favourable to the realisation of the right to development. Under clause (3) thereof, it reminds the State of its duty to cooperate with each other and of "ensuring development and eliminating obstacles to development". Article 6(2) reassures that "human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights (em-phasis supplied) and clause (3) thereof enjoins that "the States should take steps to eliminate obstacles to development. Article 8 enjoins that "the State should undertake, at the national level, all necessary measures for the realisation of the right to development and shall ensure inter alia equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income", it also provides that "an appropriate economic and social reform should be carried out with a view to eradicating all social injustice". Article 9 gives a right declaring that "all the aspects of the right to development set forth in the present declaration are indivisible and interdependent and each of them should be considered in the context of the whole" and Article 10 concludes and reminds the State of its duty "to take steps to ensure them the full exercise and progressive enhancement of the right to development, including the formulation, adoption and implementation of policy, legislative and other measures at the national levels". The directive principles in Part IV of the Constitution are fore-runners to the Convention (Emphasis sup-plied).

India being an active participant in the successful declaration of the Convention on Right to Development and a party signatory thereto, it is its duty to formulate its policies, legislative or executive, accord equal attention to the promotion of, and to protect the right to social, economic, civil and cultural rights of the people, in particular, the poor, the Dalits and Tribes as enjoined in Article 46 read with Articles 38, 39 and all other related Articles read with right to life guaranteed by Article 21 of the Constitution of India. By that constant, endeavour and interaction, right to life would become meaningful so as to realise its full potentiality of "person" as inalienable human right and to raise the standard of living, improve excellence and to live with dignity of person and of equal status with social and economic justice, liberty, equality and fraternity, the trinity are pillars to establish the egalitarian social order in Socialist Secular Democratic Bharat Republic.

Social and economic democracy is the foundation on which political democracy would be a way of life in the Indian polity. Law as a social engineering is to create just social order removing inequalities in social and economic life, socio-economic disabilities with which poor people are languishing by providing positive opportunities and facilities to individuals and groups of people. Dr. B.R. Ambedkar, in his closing speech in the Constituent Assembly on November 25, 1949, had lucidly elucidated thus :

"What does social democracy mean? It means way of life which recognises liberty, equality and fraternity as the principles of life. These principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty, would kill individual initiative - we have in India a society based on the principle of graded inequality which means elevation for some and degradation for others. On the economic plan, we have a society in which there are some who have immense wealth as against many who live in abject poverty". We cannot afford to have equality in political life and inequality in economic life. How long shall we continue to live this life of contradiction? How long shall we continue to deny equality in our social and economic life? We must remove this contradiction at the earliest possible moment or else those who suffered from inequality will blow up the structure of political democracy which this Assembly H has laboriously built up." (Vide B. Shiva Rao's, The Framing of India's Constitution : Select Documents', Vol. IV, p. 944.) The core constitutional objective of "social and economic democracy" in other words, just social order, cannot be established without removing the inequalities in income and making endeavour to eliminate inequalities in status through the rule of law. The mandate for social and economic retransformation requires that the material resources or their ownership and control should be so distributed as to subserve the common good. A new social order, therefore, would emerge, out of the old unequal or hierarchical social order. The legislative or executive measures, therefore, should be necessary for the reconstruction of the unequal social order by corrective and distributive justice through the rule of law.

Right to life - Scope and Content, Article 21 of the Constitution reinforces "right to life" - a fundamental right - which is an inalienable human right declared by the Universal Declaration on Human Rights and the sequential Conventions to which India is a signatory. In Delhi Transport Corporation v. D.T.C Mazdoor Congress, AIR (1991) SC 101 at 173 in paragraph 223, this Court had held that right to life would include right to continue in permanent employment which is not a bounty of the employer nor can its survival be at the volition or mercy of the employer. Income is the foundation to enjoy many fun-damental rights and when work is the source of income, the right to work would become as much a fundamental right. Fundamental rights can ill-afford to be consigned to the limbo of undefined premises and uncertain application. That will be a mockery of them. In Bandhua Mukti Morcha v. Union of India, [1984] 3 SCC 161 at 183-84, this Court had held that right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and that opportunities and facilities should be provided to the children to develop in a healthy manner and in conditions of freedom and dignity. Adequate facilities, just and humane conditions of work etc. are the minimum requirements which must exist in order to enable a person to live with human dignity and the State

has to take every action. In Subhash Kumar v. State of Bihar, AIR (1991) SC 420, this Court had held that the right to life includes the right to enjoyment of pollution free water and air for full enjoyment of life. In Olga Tellis v. Bombay Municipal Corporation, AIR (1986) SC 180, this Court had held that right to livelihood is an important facet of the right to life. In CE.S.C. Ltd. & Ors. v. S.C. Base & Ors., [1992] 1 SCC 441 at 462-63, para 30, it was held that right to social and economic justice is a fundamental right. Right to health of a worker is a fundamental right. Therefore, right to life enshrined in Article 21 means something more than mere survival of animal existence. The right to live with human dignity with minimum sustenance and shelter and ail those rights and aspects of life which would go to make a man's life complete and worth living, would form part of the right to life. Enjoyment of life and its attainment - social, cultural and intellectual - without which life cannot be meaningful, would embrace the protection and preservation of life guaranteed by Article 21. Right to health and social justice was held to be fundamental right to workers in Consumer Education and Research Centre v. Union of India, [1995] 3 SCC 42 and Life Insurance Corporation v. Consumer Education and Research Centre, [1995] 5 SCC 482. Right to economic equality is held to be fun-damental right in Dalmia Cement Bharat Ltd. & Anr. Etc. v. Union of India &. Ors. Etc., JT (1996) 4 SC 555. Right to shelter is held to be a fundamental human right in P.G. Gupta v. State of Gujarat & Ors., [1995] Supp. 2 SCC 182, M/s. Shantistar Builders v. Narayan Khimlal Totame & Ors,, [1990] 1 SCC 520, Chameli Singh & Ors. v. State of U.P. and Anr. [1996] 2 SCC 549 and Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan & Ors., JT (1996) 10 SC 485. The tribals, therefore, have fundamental right to social and economic empowerment. As a part of right to development to enjoy full freedom, democracy offered to them through the States regulated power of good Government that the lands in Scheduled areas are preserved for social economic empowerment of the tribals.

Meaning of Socialist Democratic Republic.

It is necessary to consider at this juncture the meaning of the "socialism" envisaged in the Preamble of the Constitution. Establishment of the egalitarian social order through rule of law is the basic structure of the Constitution. The Fundamental Rights and the Directive Principles are the means, as two wheels of the chariot, to achieve the above object of democratic socialism. The word "socialist" used in the Preamble must be read from the goals Articles 14, 15, 16, 17, 21, 23, 38, 39, 46 and all other cognate Articles seek to establish, i.e., to reduce inequalities in income and status and to provide equality of opportunity and facilities. Social justice snjoins the Court to uphold government's endeavour to remove economic inequalities, to provide decent standard of living to the poor and to protect the interest of the weaker sections of the society so as to assimilate all the sections of the society in the secular integrated socialist Bharat with dignity of person and equality of status to all.

Shri P.A. Choudhary, learned senior counsel for the 13th respondent, contended that the word 'person' in Section 3(1) of the Regulation does not cover the executive Government of the State nor

dees it prohibit the Government from transferring its land. According to him, such an interpretation would get the Regulation exposed itself to be ultra vires of Article 298 of the Constitution which should be avoided. The premise of his contention is founded on the principle that the Constitution empowers the Executive to acquire, hold and dispose of the property and the Governor, as sovereign head of the Executive, gets no power under the Fifth Schedule to prohibit the State Government to transfer its property to non-tribals. On the other hand, the Constitution has full faith in the Executive to implement the directives contained in the Fifth Schedule to the Constitution to promote the welfare of the Tribes. The Constitution has built up a balance structure distributing powers and functions to each of the three branches of the State. The Fifth Schedule read with Article 244 of Chapter X of the Constitution, with a non-obstante clause, has conferred only the legislative power on the Governor, referable to Article 245 to enact the law relating to scheduled areas. The power to acquire, hold and dispose of the property of the State was wisely left untouched in that behalf. The prohibition contained in Fifth Schedule, therefore, does not effect the power of the State under Article 298 to dispose of its property situated in Scheduled area in the manner it deems appropriate. To buttress his contention, the learned counsel cited a passage from Walter Bagehot - The English Con-stitution at page 283 that the queen, without consulting the Parliament, can by law disband the Army, engage or dismiss the officers from General Commanding-in-Chief downwards. She could sell all her war ships and all novel stores etc. He also cited "Governmental Law" by Hartley and Griffith, page 289 in that behalf. He further cited Lord Birkeenhead's dictum in Birkdale District Electric Supply Company Ltd. v. Corporation of Southport, (1926) AC 355 at 364, wherein it was held that power entrusted to a person or public body by the Legislature was to effectuate public purpose. They cannot divest themselves of those powers and duties. Nor can they do any action incompatible with due exercise of their powers or the discharge of their duties.

In Rederiaktiebolaget Amphitrite v. The King, [1921] 3 KB 500, cited by the learned counsel, the Government had given an undertaking to the owners and permitted the neutal warships to carry a particular class of cargo to a British colony in which event the said ships will be released from detention. On the faith of it the owners of the ships carried the cargo and requested for their release from detention. When clearance was refused, action was laid in the court for damage for breach of contract. It was held that such an undertaking by the Government was not enforceable in a Court of law, as it was not being within the competence of the Crown to make a contract which would have the effect of limiting its power of executive action in the future.

He also cited Youngstown Sheet & Tube Company et al v. Charles Sawyer, 343 US 579 at 632: % L ed 1153 at 1198 for the proposition that the President has executive inherent power to seize private property to meet an emergency subject to the legislation confronting him of the power. He also cited Lois P. Myers v. United States, 272 US 160 : 71 L ed 11 wherein it was held that the President has the executive power to appoint and remove executive subordinates.

In the State of Uttar Pradesh & Ors. v. Babu Ram Upadhya, [1961] 2 SCR 679, cited by Shri Choudhary, it was held that the pleasure doctrine of the President under Article 310 of the Constitution is qualified by Article 311 and is not subject to any law made by the Parliament or the Legislature of the State. In other words, according to the learned counsel, the ratio therein reiterates that the executive power of the President/Governor granted under the Constitution is not subject to

any limitations but is co- extensive with the exercise of the legislative power.

Maru Ram Etc. Etc. v. Union of India & Anr., [1981] 1 SCR 1196 was cited for the proposition that the power, of the President under Article 72 and of the Governor under Article 162, are not subject to legislative control. The power of Legislature imposing minimum sentence of im-prisonment under Section 433A of the Code of Criminal Procedure is not subject to, nor can nullify wholly or partly, the executive power of the President or the Governor to pardon or to reduce the life imprisonment of a convict.

It is true, as contended by Shri Chowdhary, that the Constitution has demarcated legislative, executive and judicial powers and entrusted them to the three wings of the State; in particular the President/Governor of the State is to exercise the executive power in their individual discretion. It is not subject to legislative limitations to be done in accordance with rules of business. In particular, the President/Governor is entrusted with the execu-tive power co-extensive with the legislative power enumerated in the Seventh Schedule read with Article 245 of the Constitution. The executive power especially conferred by the Constitution like the pleasure tenure or the power of pardoning a convict are in our view, not apposite to the issue. The power of the executive Government in that behalf has wisely been devised in the Constitution is not subject to any restriction except in accordance with the Constitution and the law made under Article 245 read with the relevant Entry in the Seventh Schedule to the Constitution is subject to Fifth Schedule when it is applied to Scheduled area. The power of the Government to acquire, hold and dispose of the property and the making of contracts for any purpose conferred by Article 298 of the Constitution equally is co-extensive with the legislative power of the Union/State. However, Article 244 (1) itself specifies that provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled areas and Scheduled Tribes in any State except the excluded areas specified therein. The legislative power in Clause (1) of Article 245 equally is "subject to the provisions of the Constitution" i.e. fifth Schedule. Clause (1) of para 5 of Part B of the Fifth Schedule applicable to Scheduled areas, adumbrates with a non obstante clause that "Not- withstanding anything in the Constitution, in other words, despite the powerr under Article 298, the Governor may, by public notification, direct that any particular Act of Parliament or of the Legislature of a State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State, subject to such exceptions and modifications as he may specify in the notification and any direction given under clause (1) of para 5, may be given so as to have retrospective effect". The executive power of the State is, therefore, subject to the legislative power under clause 5(1) of the Fifth Schedule. Similarly sub-para (2) thereof empowers the Governor to make regulation for the peace and good government of any area in a State which is for the time being a Scheduled Area. In particular and without prejudice to the generality of the foregoing power, such regulation may regulate the allot- ment of land to members of the Scheduled Tribes in such area or may prohibit or restrict the transfer of land under clause (a) by or among the members of the Scheduled Tribes in such areas. In other words sub-para 5(2) combines both legislative as well as executive power, clause 5(2)(a) and

(c) legislative power and clause (b) combines both legislative as well as executive power. The word 'regulation' in para 5(2)(b) is thus of wide import.

Meaning of the word 'Regulation' in the title of the Regulation, para 5(2) of the Fifth Schedule of the Constitution.

The question then is: whether the word "regulate" in para 5 clause (2)(b) would include prohibition to transfer the Government land? It requires no elaborate discussion in this behalf. While interpreting Article 19(l)(g) of the Constitution, this Court has consistently being held that the term 'regulation' would include total prohibition vide Narendra Kumar v. Union of India, [I960] 2 SCR 372; Fatehchand Himmatlal v. State of Maharashtra, [1977] 2 SCC 670; State of U.P. & Ors. v. Hindustan Aluminium Corpn. and Ors., [1979] 3 SCC 229; K. Ramanathan v. State of Tamil Nadu & Anr., [1985] 2 SCC 116. This Court consider the meaning of the word "regulation" in Air India Statutory Corporation Etc. v. United Labour Union & Ors. Etc., 1996 9 SCALE 70 paragraph 56 at 104-05. Therein, the Contract Labour (Regulation and Abolition) Act, 1970 came for consideration. The question was whether the word "regulation" would include regularisation of the contract labour in the establishment in which contract labour system was abolished, though it was not expressly provided. A Bench of three Judges had held that the word "regulation", in the absence of restrictive words, must be regarded as plenary in the larger public interest. By necessary implication it includes to do everything which is indispensable for the purpose of carrying out the purposes in view. Accordingly, it was held that though no express provision was made in the Contract Labour Regulation and Abolition Act to regularise the services of the contract labour, working in an establishment after the abolition of contract labour, by necessary implication, the word 'regulation' includes the power to regularise their services as permanent employees in the establishment. Therefore, the word "regulate" the allotment of land to members of Scheduled Tribes in scheduled area in the Fifth Schedule by Clause 5(2)(b) must be read as a whole to ensure regulation of the land only to and among the members of the Scheduled Tribes in the Scheduled area. In the light of the provisions contained in clause (a) of sub-para (2) of para 5, there is implied prohibition on the State's power of allotment of its land to non-tribals in the Scheduled Areas. When so read there is no incompatibility and inconsistency between the power of the executive Government and the Constitution and conjoint operation would elongate the good governance of the Scheduled Areas. So, while prohibiting transfer of land between natural persons, i.e., tribles and non-tribals and preventing non-tribals to purchase from or transfer to another non-tribal, his right, title of interest in the land in the scheduled area, at the same breathe would not be permissible for the Government to transfer their land to a non-tribal except for equally competing public purpose. The answer obviously should be that it is permissible to the Government to transfer its lands to the non-tribals. This negative answers leads to effectuate the constitutional objective to preserve the land in the scheduled area to the tribals, prohibits the Government from allotting their land to the non- tribals; prohibit infiltration of the non-tribals into the scheduled area and prevents exploita-tion of the tribals by non- tribals in any form. This purposive interpretation would ensure distributive justice among the tribals in this behalf and elongates the constitutional commitment. Any other interpretation would sow the seed beds to disintegrate the tribal autonomy, their tribal culture and frustrate empowerment of them, socially, economically and politically, to live a life of equality, dignity of person and equality of status.

It would, therefore, be clear that the executive power of the State to dispose of its property under Article 298 is subject to the provisions in the Fifth Schedule as an integral scheme of the

Constitution. The legislative power of the State under Article 245 is also subject to the Fifth Schedule, to regulate the allotment of the Government land in the Scheduled Areas. Obviously, therefore, the State legislature of Andhra Pradesh has now imposed total prohibition under Mines Act to transfer its lands to the non-tribals. Doubtless that under Article 298, the State exercises its power of disposal for public purpose. When two competing public purposes claim preferential policy decision, option to the State should normally be to elongate and achieve constitutional goal. Secondly, the constitutional priority yields place to private purpose, though it is hedged by executive policy. As a facet of interpretation, the Court too adopts purposive inter-pretation tool to effectuate the goals set down in the Constitution. Equally, the executive Government in its policy options requires to keep them in the backdrop and regulate disposal of their land- property in accordance with the constitutional policy, executive decision backed by Public policy and, at the same time, preserve paramount Tribal interest in the scheduled area. No abstract principle could be laid in that behalf. Each case requires examination in the backdrop of the legislative/executive action,its effect on the constitutional objectives and the consequential result yields therefrom. The law relating to the power of the President under the Constitution of U.S.A, as has been interpreted by the Supreme Court of U.S.A. or the executive power of the Queen under the scheme in English unwritten Constitution transformed by Convention does not assist us much in this behalf. Shri Chowdhary also cited an article The Notion of a Living Constitution" written by William H. Rehnquist, the present Chief Justice of Supreme Court of USA [Texas Law Review Vol. 54, 693] emphasising that the Executive should have full freedom in exercising its executive power and the Court cannot limit the executive power by interpretation of a statute or regulation. This also is of no assistance since the Constitution of India conferred express power of judicial review on the constitutional Courts, i.e., Supreme Court of India and High Courts under Article 32 and 226 of the Constitution respectively. From the aforestated constitutional perspective and the interpretation of the words 'person' and 'regulation' put up in the earlier parts of the judgment, the question arises: whether the word 'person' under Section 3(1) of the Regulation would include the State Government.

Shri Rajeev Dhavan, learned senior counsel for the appellant, con-tended that the word 'person' in Section 3(l)(a) requires interpretation, keeping in view the contextual constitutional history of prohibition on transfer of the land by a tribal to a non-tribal including that of the Government land, differently depending upon the context in which it has occurred in the first part of Section 3(2)(a) the word 'person' may be considered in a generic sense and in the second part thereof to mean a natural person. Prohibition on the transfer of the land by a tribal to a non-tribal visualises transfer between natural persons. The factum of mem-bership of the person as a tribe does not necessarily cut down the width of the word 'person', namely, legal person taken alongside the natural person. The word 'person' requires interpretation in the natural sense of the Context in which it is used. Legal person may be natural, artificial or statutory person. The words "whether or not" in clause 3(2) (a) are in the nature of clarification and it would not cut down the contextual meaning. The words "such person" in the first part of Section 3(l)(a) must be interpretated to mean transferor, namely, artificial or statutory person apart from natural person. The objection of Section 3(1)(a) would be rendered nugatory if the meaning of the word 'person' is confined or restricted to natural person in Section 3(2)(a). Generic person may be a co-operative society, a shareholder of a company and equally a Govern-ment constitutionally capable to hold, acquire and dispose of the property. Therefore, the word 'person' used in the first part of Section 3(2)(a) is of wider import in the context

of ownership of the land transfer of which is prohibited within the scheduled area to a non-tribal. The word 'person' in the second clause was used in the context of natural persons, i.e., the transfer between the tribes and non-tribes. In that context, the word 'person' was used in a restricted sense. So in the context of the artificial or juridical or statutory person, the word 'person' is of wider import. Any other interpretation would defeat the object of the Fifth Schedule and the Regulation. Similarly, Section 3(2)(b) regulates the reverse effect. The land in Scheduled area is presumed to belong to the tribals treating them as a class. The meaning of the word 'person' does not detract from the meaning of the word 'person' b Section 3(2)(a). Similarly, in Section 3(2)

(c) if a non-tribal intends to sell the land to a tribal and if the latter is not willing to purchase the same, the government may purchase the land from the non-tribal person and distribute it to the tribal (in such manner as may be prescribed). The words "manner of disposal" would indicate that it should be only in favour of the Scheduled Tribes since the sole object of the Fifth Schedule and its species, the regulation, is that the land in Scheduled area requires preservation among the tribals by allotment and their enjoyment by the tribals along. Section 3(2)(b) reinforces that the assignment or sale of the property should only be in favour of the Scheduled Tribes or a Society composed solely of the members of the Scheduled Tribes. The entire property in Scheduled area is treated to be the property, be it taken from the non- tribals or is of the Government and at the disposal of the State Government. In that context, the learned counsel has drawn our attention to the word 'regulation' in the Fifth Schedule, para 5(2)(b). He also contends that the word 'regulation' requires to be interpreted broadly to preserve not only the tribal autonomy but also to subserve distributive justice in favour of the tribals in the matter of assignment of the land belonging to the Government in their favour. Conversely, there is implied prohibition on the transfer of Government land in favour of the non-tribal The words "peace and good government" used in para 5(2) also requires to be understood in a wider sense. Good Government must, of necessity, be in accordance with the Constitution and dispensation of socio-economic justice to the tribals including regulation of the land, distribution between the tribals and prohibition on the non-tribals to entrench into scheduled area, to acquire, hold and deal with the lands in scheduled area. It would defeat the object of the Constitution envisaged in the Fifth Schedule thereof because the non-tribals get the Government land transferred in their favour and manoeuvre to have the tribals deprived of their land by other illegal means. The word 'State', therefore, would include within the concept of the word 'person' in Section 3 of the Act. In support thereof, Shri Rajeev Dhavan cited State of West Bengal v. Union of India, [1964] 1 SCR 371 and Madras Electric Corporation case. He has also drawn our attention to construe the provisions in the context of the whole statute relving upon Reserve Bank of India v. Peerless General Finance & Invest-ment Co. Ltd. & Ors., [1987] 1 SCC 424 para 33 at page 450-51 and C.E.S.C. Ltd, & Ors. v. Subhash Chandra Base & Ors., [1992] 1 SCC 441 at 464. He further contends that in view of the object, the word may be read broadly, in the light of public purpose and social and economic justice which the Regulation seeks to serve. He cited, in support of his contention, the following decisions viz. The State of Bombay v. R.M.D. Chamar-baugawala, [1957] SCR 874 at 892-95; Ishwar Singh Bindra & Ors. v. The State of U.P., [1969] 1 SCR 219 at 225; Nedurimilli Janardhana Reddy v. Progessive Democratic Students' Union & Ors., [1994] 6 SCC 506 para 6. A word may be read in different contexts in a different way. He cited that the word 'sale' used in the context of freedom of speech and expression was given different meaning in Printers (Mysore) Ltd. & Ors. v. Asstt. Commercial Tax Officer & Ors., [1994] 2 SCC 434 at 445; Pushpa Devi & Ors. v, Milkhi Ram (dead)

by his Lrs., [1990] 2 SCC 134 and Commissioner of Income-tax, Bangalore v. J.H. Gotla Yadagiri, [1985] 4 SCC 343. The word 'vest' was interpreted with a different meaning in Dr. M. Ismail Faruqui & On. v. Union of India & Ors., [1994] 6 SCC 360 at pp. 393, 404-05 and 423. He therefore, contends that different meaning is required to be given to the word 'person' as used in Section 3(l)(a), 3(l)(b) and 3(l)(c) of the Act. We find force in his contention.

M/s. Sudhir Chandra, L. Nageshwara Rao, A.V. Rangam and their companion learned advocates, contended that in Section 3 of the Regula-tion read with the Fifth Schedule, para 5 sub-clauses 2(b), the word "person" would be understood in its natural and contextual perspective which would indicate that the word 'person' would be applicable only to natural persons. The learned counsel laid great emphasis on the Statement of Objects and Reasons for amendment of the Regulation in 1970. Accord-ing to the learned counsel, the golden rule of interpretation is that the legislative intent is to be effectuated by giving natural and grammatical meaning to the word used in a statute. Only when the court finds ambiguity of the expression used by the statute, principles of interpretation would be applicable. In this case, there is no such ambiguity. The word 'person' is simple and plain, connoting prohibition on transfer of land between natural persons, namely, tribals and non-tribals. That is made manifest by the Statement of Objects and reasons of the amended Regulation which envisages that the Regulation was brought on statute to prohibit alienation of the lands in the scheduled area by tribal in favour of a non-tribal. By necessary implication the Government is not intended to be included in the word 'person'. Shri P.A. Chowdhary, learned Senior Counsel, further elaborated, stating that Section 3(2)(b) amplifies that the land is purchased from a non-tribal by the Government or where the heirs of a tribal transferor are not willing to take back the property, assignment or disposal of the said property in favour of another tribal as "a property at the disposal of the State Government" and prosecution for violation of the Regulation under Section 6A by way of penalty, are not intended to be applied to the Government when the transfer is made in violation of the provisions of the Regulation; and, therefore, the word 'person' should be given restricted meaning applicable only to natural person.

Sri Sudhir Chandra further contended that Clause 2(a) of para 5 of the Fifth Schedule restricts transfer of land by or among members of the Scheduled Tribes; Clause (b) regulates the allotment of land to members of the Scheduled Tribes in such areas; and clause (c) regulates money-lending business by non-tribals to members of the Scheduled Tribes in scheduled area and para 5(3) gives power to the Governor to regulate by law or to repeal or amend any Act of Parliament or of the Legislature of the State or any existing law in relation to that area. The purpose, thereby, is to prevent exploitation of tribals by non-tribals. The State Government is not expected to exploit the tribals. The Fifth Schedule does not prevent establishment of any factory or an industry or any scheme for development of the tribal area by non-tribals. Exploitation of valuable minerals by the non-tribals is not intended to be prevented by Fifth Schedule to the Constitution. In particular, they laid emphasis on para 5, clause 2(b) of the Fifth Schedule, which does not prohibit the allotment of the land to the non- tribals. It is contended that the word "regulate" used therein does not necessarily imply prohibition. If such a construction is adopted, it would hinder the progress of the tribal areas. It introduces mutually internal and external contradictions. Harmonious interpretation, therefore, has to be adopted to make the Regulation and the Fifth Schedule work as a consis-tent whole, regulating prohibition on transfer of land in the tribal areas to the non-tribal natural persons

only. Thereby, the word 'person' should be understood in that perspective. The government and juristic persons are outside the purview of paras 5(2) and 5(3) of the Fifth Schedule and Section 3 of the Regulation.

The respective contentions give rise to the question: whether the regulation prohibits the State Government transferring its lands to non- tribals?

The historical evidence collected and culled out from B. Shiva Rao's "In the making of the Constitution" and the scheme of the representative form of Government furnishes background material for interpretation of the word "person". It is well established rule of interpretation that the words of width issued in the Constitution requires wide interpretation to effectuate the goals of establishing an egalitarian social order supplying flesh and blood to the glorious contents and context of those words and to enable the citizen to enjoy the rights enshrined in the Constitution from generation to generation. In Ashok Kumar Gupta v. State of U.P., JT (1997) 4 SC 251, this Bench has applied the rule of wide interpretation of the Constitution. It bears no reiteration; reasons given therein mutatis mutandis would proprio vigore apply to the fact situation. From the above perspective, having given our deep and anxious consideration to the respective contentions of the learned counsel for the parties, we are of the considered view that the interpretation put up by Shri Rajeev Dhavan merits acceptance. It is seen and bears recapitulation that the purpose of the Fifth and Sixth Schedules to the Constitution is to prevent exploitation of truthful, inarticulate and innocent tribals and to empower them socially, educationally, economically and politically to bring them into the mainstream of national life. The founding fathers of the Constitution were conscious of and cognizant to the problem of the exploitation of the Tribals. They were anxious to preserve the tribal culture and their holdings. At the same time, they intended to provide and create opportunities and facilities, by affirmative action, in the light of the Directive Principles in part IV, in particular, Articles 38, 39, 46 and cognate provisions to prevent exploitation of the tribals by ensuring positively that the land is a valuable endowment and a source of economic empowerment, social status and dignity of persons. The Constitution intends that the land always should remain with the tribals. Even the government land should increasingly get allotted to them individually and collectively through registered Cooperative Societies or agricultural/farming Cooperative Societies composed solely of the tribals and would be managed by them alone with the facilities and opportunities provided to them by the Union of India through their Annual Budgetary allocation spent through the appropriate State Government as its instrumentalities or local body in a planned development so as to make them fit for self-governance. The words "peace and good government" used in the Fifth Schedule require widest possible interpretation recognised and applied by this Court in T.M. Kanniayn v. Income-tax Officer, Pondicherry & Anr., [1968] 2 SCR 103 at 107-08 and Queen v. Russell, (1882) 7 AC 829.

By the Constitution (73rd Amendment) Act, 1992 amended Part IX of the Constitution, the principle of self-government based on democratic principles at Gram Panchayat and level upwards was introduced through Articles 343 to 343ZG. As an integral scheme thereof, the Andhra Pradesh (Provision of the Panchayats Extension to Scheduled Areas) Act, 1966 came to be made. Section 4(d) of that Act provides that "(N)otwithstanding anything contained under Part IX of the Constitution, every Gram Sabha shall be competent to safeguard and preserve... community resources". Clause (j)

of Section 4 provides that planning and management of minor water bodies in the Scheduled Areas shall be entrusted to the Panchayats at the appropriate level. Under clause (m) (iii) the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawful alienation of land of a Scheduled Tribe and under clause (iv) the power to manage village markets, by whatever name called, are entrusted to the Gram Panchayats. It would indicate that the tribal autonomy of management of their resources including the prevention of the alienation of the land in the Scheduled Areas and taking of appropriate acdon in that behalf for restoration of the same to the tribals, is entrusted to the Gram Panchayats.

The maxim "reddendo singula singulis" will apply to the interpretation of the word 'person" so that the general meaning of the word "person" in its generic sense with its width would not be cut down by the specific qualification of one species, i.e., natural "person" when it is capable to encompass, in its ambit, natural persons, juristic persons and constitutional mechanism of governance in a democratic set up. It has already been held, and bears no repetition, that the State, by Cabinet form of Government, is a persona ficta a Corporate sole. Constitution empowers the State to acquire, hold and dispose of their property. The Governor in his personal responsibility is empowered to maintain peace and good government in scheduled area. The Fifth Schedule to the Constitution empowers him to regulate allotment of the land by para 5(2)(b) read with Section 3 of the Regulation of the land be it between natural persons, i.e., tribals and non-tribals; it imposes total prohibition on transfer of the land in scheduled area. The object of the Fifth Schedule and the Regulation is to preserve tribal autonomy, their culture and economic empowerment to ensure social, economic and political justice for preservation of peace and good government in the Scheduled Area. Therefore, all relevant clauses in the Schedule and the Regulation should harmoniously and widely be read so as to elongate the aforesaid constitutional objectives and dignity of person to the Scheduled Tribes, preserving the integrity of the Scheduled Areas and ensuring distributive justice as an integral scheme thereof. Clauses (a) and (c) of sub para (2) of para 5 of the Fifth Schedule prohibits transfers Inter vivos between tribals and non- tribal natural persons and prevents money-lenders to exploit the tribals. Clause (b) intends to regulate allotment of land not only among tribals but also prohibits allotment of the land belonging to the government to the non-tribals. In that behalf, wider interpretation of "regulation" would include "prohibition" which should be read into that clause. If so read, it subserves the constitutional objective of regulating the allotment of the land in Scheduled Areas exclusively to the Scheduled Tribes. Clause 5(2)(b) ensures distributive justice of socio-economic empowerment which yields meaningful results in reality . If purposive construction, in this backdrop is adopted, no internal or external contradiction would emerge. The word "person" would include both natural persons as well as juristic person and constitutional Government. This liberal and wider interpretation would maximise allotment of Govern-ment land in scheduled area to the tribals to make socio- economic justice assured in the Preamble and Articles 38, 39 and 46, a reality to the tribals. The restricted interpretation would defeat the objective of the Constitu-tion. The word "person" would be so interpreted as to include State or juristic person Corporate sole or persona ficta. Transfer of land by the juristic persons or allotment of land by the State to the non-tribals would stand prohibited, achieving the object of para 5(2) of the Fifth Schedule of the Constitution and Section 3 of the Regulation. If the word 'person' is interpreted to mean only natural persons, it tends to defeat the object of the Constitution, the genus and the Regulation, its species. As a corollary, by omission in the final draft of the Fifth Schedule of the power of the State

Government to transfer its land to the non-tribals with the sanction of a competent authorised officer or authority would, by interpretation brought into effect and the object of the Constitution would easily be defeated. We are, therefore, inclined to take the view that the word 'person' includes the State Government. The State Government also stands prohibited to transfer by way of lease or any other form known to law, the Government land in scheduled area to non- tribal person, be it natural or juristic person except to its instrumentality or a Co-operative Society composed solely of tribes as is specified in the second part of Section 3(1) (a). Any other interpretation would easily defeat the purpose exclusive power entrusted by the Fifth Schedule to the Governor. If the Cabinet form of Government would transfer the land of the Government to non-tribals peace would get disturbed, good governance in scheduled area would slip into the hands of the non-tribals who would drive out the tribals from scheduled area and create monopoly to the well developed and sophisti-cated non-tribals; and slowly, and imperceptible, but surely, the land in the scheduled area would pass into the lands of the non-tribals. The letter of law would be an empty content and by play of words deflect the course of justice to the tribals and denude them of the socio-economic empowerment and dignity of their person.

The word "person" in Section 3(l)(a) would, therefore, be construed to include not merely the natural persons, in the context of tribal and non tribal who deal with the land in Scheduled Areas by transfer inter vivos but all juristic persons in the generic sense, including the Corporation ag-gregate or Corporation sole, State, Corporation, partnership firm, a com-pany, any person with corporate veil or persons of all hues, either as transferor or transferee so that the word 'regulate in para 5(2)(b) of the Fifth Schedule in relation to the land in Scheduled Areas would be ap- plicable to them either as transferor or transferee of land in a Scheduled Area. It, thus, manifests the constitutional and legislative intention that tribals and a Cooperative Society consisting solely of tribal members alone should be in possession and enjoyment of the land in the scheduled area as dealt with in various enactments starting from Gunjam and Vizianagaram Act, 1839 to the present regulation.

This interpretation of ours is consistent with the constitutionality of the Regulation as was upheld by this Court in P. Rami Reddy & Ors. Etc, v. State of A.P. & Anr. Etc., [1988] Supp. 1 SCR 443; Lingappa Pochanna Appelwar v. State of Maharashtra and Anr., [1985] 1 SCC 479 and Manchegowda and Ors. v. State of Kamataka and Ors., [1984] 3 SCC 301. There is no internal and external contradiction in this process of har-monious and purposive interpretation of para 5(2)(a) of the Fifth Schedule which regulates transfers between natural persons; Para 5(2) (b) encompas-ses within its ambit, the transfer by the Government of its land to a non- tribal and clause (c) or the relevant clauses in Sections 3 and 4 of the Regulation. The Regulation prevents exploitation of the tribals through the State Government; from the other end, it does not allow parting with of their land and prevents induction of non-tribals into the scheduled area by allotment of the land or by regulating allotment of the land, be it private or private corporate aggregate. This interpretation per se, therefore, is public law interpretation to subserve the constitutional purpose without recourse to private law principles.

In Minerva Mills Ltd. & Ors. v. Union of India & Ors., [1981] 1 SCR 206, the Constitution Bench had held that the edifice of our Constitution is built upon the concept crystalised in the Preamble. We "the People"

> resolved to constitute ourselves a socialist State which carries with it the obligation to secure to the people, justice - social, economic and political. We, therefore, put Part IV into our Constitution containing Directive Principles of State Policy which specifies the socialistic role to be achieved. In D.S. Nakara & Ors. v. Union of India, [1983] 2 SCR 165 at 187F to 189H, another Constitution Bench had dealt with the object to amend the Preamble by the Constitution (42nd Amendment) Act and pointed out that the concept of Socialist Republic was to achieve socio- economic revolution to end poverty, ignorance and disease and inequality of opportunity. It was pointed out that socialism is a much misunderstood word. Values deter-mine contemporary socialism - pure and simple. The principal aim of socialist State is to eliminate inequality in income and status and standards of life. The basic framework of socialism is to provide a decent standard of life to the working people especially to provide security from cradle to grave. The less equipped person shall be assured a decent minimum standard of life and exploitation in any form shall be prohibited. There will be equitable distribution of national cake and the worst off shall be treated in such a manner as to push them up the ladder. The Preamble directs the centers of power, Legislature, Executive and Judiciary - to strive to set up from a wholly feudal exploited slave society to a vibrant, throbbing socialist welfare society under rule of law though it is a long march, but during the journey to the fulfilment of goal every State action including interpretation whenever taken, must be directed and must be so interpreted as to take -the society towards establishing egalitarian socialist State, the goal. It was, therefore, held that "it, therefore, appears to be well established that while interpreting or examining the constitutional validity of legislative/ad-ministrative action, the touchstone of Directive Principles of State Policy in the light of the Preamble will provide a reliable yardstick to hold one way or the other."

Pt. Jawaharlal Nehru, while participating in the discussion on the Constitution (First Amendment) Bill, had stated that the Directive Prin- ciples are intended to bring about a socio-economic revolution and to create a new socio-economic order where there will be social and economic justice for all and for everyone, not only to fortunate few but also the teeming millions of Indians who would be able to participate in the fruits of freedom and development and exercise the fundamental rights.

Dr. Ambedkar, while introducing the Preamble of the Constitution for discussion by the Constituent Assembly, had stated that the purpose of the Preamble is to constitute "a new society in India based on justice, liberty and equality". The Constituent Assembly debates of November 1948 at pages 230 to 357 do indicate that the Directive Principles intended to provide life blood to social, economic and political justice to all people. Some of the members like Mahavir Tyagi, Professor K.T. Shah, Dr. Saxena Etc. pleaded for incorporation of socialism as part of the Preamble but Dr. Ambedkar the father of the Constitution, while rejecting the amendment, made it clear that the socio-economic justice provided in the Directive Principles and the Fundamental Rights given in Chapter III would meet the above objective without expressly declaring India as a socialist State in the Constitution. Alladi Krishnaswamy Ayyer supported Dr. Ambedkar and had stated that "the constitution, while it

does not commit the country to any particular form of economic structure of social adjustment, gives ample scope for the future legislature and the future Parliament to evolve any economic order and undertake any legislation they choose in public interest". Pandit Jawaharlal Nehru in his speech also emphasised the need to enter into a new social order in which "there would be valid growth in the standard of living of all the people of India with equitable distribution of wealth and equality of opportunity and status of all". Dias, in his "Jurisprudence" (5th Edn.) on 'distributive justice' in Chapter 4 at page 66, has stated that justice is not synonymous with equality; equality is one aspect of it. Justice is not something which can be captured in a formula once and for all. It is a process, a complex and shifting balance between many factors including equality. Justice is never given, it is always a task to be achieved. Justice is just allocation of advantages and disadvantages, preventing the abuse of power, preventing the abuse of liberty by providing facilities and opportunities to the poor and disadvantaged and deprived social segments for a just decision of disputes adapting to change.

Justice P.B. Sawant, former Judge of this Court, in his "Socialism under the Indian Constitution" had stated at page 2 that today socialism has come to be associated with certain social and economic arrangements and a way of life in a socialist economy that the resources of the society are owned by the State as a whole and are used for the benefit of all,. for ensuring all basic human rights to every member of the society and not for the profit of a few. By human rights is meant - all economic, political, social and cultural rights which are necessary for an individual to realise his full potential. In a socialist society, social, political and economic inequalities disappear and none is allowed to possess economic power to the extent that he is in a position to exploit or dominate others. It is only such society which can guarantee human dignity, stability, peace and progress.

Mahatma Gandhiji, the father of the nation, in 'Harijans' dated October 9,1937 had stated that "true economics never militates against the highest ethical standard, just as all true ethics to be worth its name must at the same time be also good economics. An economies that inculcates Mammon worship, and enables the strong to amass wealth at the expense of the weak, is a false and dismal science. It spells death. True economics, on the other hand, stands for social justice, it promotes the good of all equally, including the weakest, and is indispensable for decent life." Dr. V.K.R.V. Rao, one of the eminent economists of India, in his "Indian Socialism Retrospect and prospect" has stated at page 46-47 that a socialist society has not only to bring about equitable distribution but also to maximise production. It has to solve problems of unemployment, low income and mass poverty and bring about a significant improvement in the national standards of living. At page 47, he has stated that socialism, therefore, requires deliberate and purposive action on the part of the State in regard to both production and distribution and the fields covered are not only savings, investment, human skills and use of science and technol-ogy, but also changes in property relations, taxation, public expenditure, education and the social services. A socialist society is not just a give-away society nor is it only concerned with distribution of income. It must bring about full employment as also an increase in productivity.

A socialistic society involves a planned economy which lakes note of time and space considerations in the distribution and pricing of output. It would be necessary for both the efficient working of socialist enterprises and the prevention of unplanned and anarchical expansion of private

enterprises. The Indian conception of socialism with democracy with human dignity is by creation of opportunities for the development of each individual and not the destruction of the individual. It is not for the merging of the individual in the society. The Indian socialist society wants the development of each individual but requires this development to be such that it leads to the upliftment of the society as a whole. Fundamental duties in Chapter VI-A of the Constitution to bear meaningful content, facilities and opportunity on equal footing is the fundamental condition of a socialist society. The more the talent from backward classes and areas get recogni-tion and support, the more socialist will be the society. Public sector and private sector should harmoniously work. The Indian approach to socialism would be derived from Indian spiritual traditions. Buddhism, Jainism, Vedantic and Bhakti Hinduism, Sikhism, Islam and Christianity have all contributed to this heritage rooted to respect for human dignity and human equality. While imposing restrictions on the right to private property even to the extent of abolishing it where necessary in the social and public interest, it permits private enterprise in economic activity and makes for a mixed economy rather than a completely socialised economy. It abhors violence and class war and heirarchical class structure and pins its faith on non-violence, sacrifice, and dedication to the service of the poor and as a natural consequence, its implementation is envisaged through Parliamen-tary democracy planned economy and the rule of law rather than through a violent revolution or a dictatorship in any form. Indian socialism, therefore, is different from Marxist or scientific socialism.

To achieve the goal set down in the Preamble, the Directive Prin-ciples and fundamental rights, the Constitution envisaged planned economy. The Planning Commission has been given the constitutional status for the above purpose. The Third Five Year Plan document extracts the basic features of the socialist pattern of society thus :

> ".....Essentially, this means that the basic criterian for determining lines of advance must not be private profit, but social gain, and that the pattern of development and the structure of socio-economic relations should be so planned that they result not only in appreciable increase in national income and employment but also in greater equality in incomes and wealth.....The benefits of economic development must accrue more and more to the rela-tively less privileged classes of society, and there should be progres-sive reduction of the concentration of incomes, wealth and economic power.....The socialist pattern of society is not to be regarded as some fixed or rigid pattern. It is not rooted in any doctrine or dogma.....It is neither necessary nor desirable that the economy should become a monolithic type of organisation offering little play for experimentation either as to forms or as to modes of functioning. Nor should expansion of the public sector mean centralization of decision- making and of exercise of authority.....The accent of the socialist pattern of society is on the attainment of positive goals, the raising of living standards, the enlargement of opportunities for all, the promotion of enterprise among the disadvantaged classes and the creation of a sense of partnership among all sections of the community. These positive goals provide the criteria for basic decisions. The directive prin-ciples of State policy in the Constitution have indicated the ap-proach in broad terms; the socialist pattern of society is a more concretised expression of this approach. Economic policy and institutional changes have to be planned in a manner

that would secure economic advance along democratic and egalitarian lines....."

Mr. G.D.H. Cole, one of the leading socialist of U.K., in his speech 'The Growth of Socialism" published in 'Law and Opinion in England in the 20th Century' (Morris Ginsberg, Editor) at page 79-80, has stated that socialism is a movement aiming at greater social and economic equality and using extended State action as one of its methods, perhaps the most distinctive but certainly not the only one needed to be taken into account. The affairs of the community shall be so administered as to further the common interests of ordinary men and women by giving to everyone, as far as possible, an equal opportunity to live a satisfactory and contended existence, coupled with a belief that such opportunity is incompatible with the essentially unequal private ownership of the means of production. It requires not merely collective control of the uses to which these are to be put, but also their collective ownership and disinterested administration for the common benefit. This basic idea of socialism involves not only the socialisation of the essential instruments of production, in the widest sense, but also the abolition of private incomes which allow some men to live without rendering or having rendered any kind of useful service to their fellowmen and also the sweeping away of forms of educational preference and monopoly which divide men into social classes. It involves, in effect whatever is needful for the establishment of what socialists call a 'classless society' and in pursuance of this aim its votaries necessarily look lor support primarily, though not exclusively, to the working classes, who form the main body of the less privileged under the existing social order. Socialists seek to reduce economic and social inequalities not only in order to remove unearned sources of superior position and influence, but also in order to narrow the gaps between men to such as are compatible with all men being near enough together in ways of living to be in substance equals in their mutual intercourse.

In Excel Wear Etc. v. Union of India & Ors., [1979] 1 SCR 1009, the Constitution Bench had held at pages 1030-31 that the concept of socialism or socialist state has undergone changes from time to time from country to country and from thinker to thinker. But some basic concept still holds the field. The doctrinaire approach to the problem of socialism be eschewed and the pragmatic one should be adapted. So long as the private ownership of an industry is recognised and governs an overwhelmingly large propor-tions of an economic structure, it.is not possible to say that principles of socialism and social justice can be pushed to such an extreme so as to ignore completely or to a very large extent the interest of another section of the public, namely, the private ownership of the undertaking. In other words, the object of intermediation should be co-existence and flourishing of mixed economy. In State of Kamataka v. Shri Ranganatha Reddy & Anr. Etc., [1978] 1 SCR 641, a Bench of nine Judges of this Court considered nationalisation of the contract carriages. In that behalf, it was held that one of the principal aims of socialism is the distribution of the material resour-ces of the community in such a way as to subserve the common good. This principle is embodied under Article 39(b) of the Constitution as one of the essential directive principles of State polity. Therein, this Court laid stress on the word 'distribute' as used in Article 39(b) being a key-word of the provision emphasising that The key word is distribution and the genius of the Article, if we may say so., cannot but be given full play as it fulfils the basic purpose of restructuring the economic order. Each word in this Article has a strategic role and the whole Article is a social mission. It embraces the entire material resources of the community. Its task is to distribute such resources, its goal is to undertake distribution as best to subserve the common good. It reorganises

by such distribution the owner-ship and control."

In Sanjeev Coke Manufacturing Company v. Bharat Coking Coal Ltd. & Anr., [1983] 1 SCR 1000 another Constitution Bench reiterated the above view; while considering Article 39(b) of the Constitution, at page 1020, this Court had held that the broad egalitarian principle of economic justice was implicit in every directive principle and, therefore, a law designed to promote a directive principle, even if it came into conflict with the formalistic and doctrinaire view of equality before the law, would most certainly advance the broader egalitarian principle and desirable constitutional goal of social and economic justice for all. If the law was aimed at the broader egalitarianism of the Directive Principles, Article 31C protected the law from needless, unending and rancorous debate on the question whether the law contravened Article 14's concept of the equality before the law. The law seeking the immunity afforded by Article 31C must be a law directing the policy of the State towards securing a Directive Principle and the connection with the Directive Principle must not be some remote or tenuous connection. The object of the nationalisation of the coal mine is to distribute nations resources. It was held at page 1023 that though the word 'socialist' was introduced in the Preamble by late amendment of the Constitution, that socialism has always been the goal is evident from the Directive principles of the State policy. The amendment was only to emphasise the urgency. Ownership, control and distribution of national productive wealth for the benefit and use of the community and the rejection of a system of misuse of its resources for selfish ends is what socialism is about and the words and thought of Article 39(b) but echo the familiar language and philosophy of socialism as expounded generally by all socialist writers. Socialism is, first of all, a protest against the material and cultural poverty inflicted by capitalism on the mass of the people. Nationalisation of coal mine for distribution was upheld as a step towards socialism. In State of Tamil Nadu Etc. Etc. v. L. Abu Kavur Bai & Ors, Etc., [1984] 1 SCR 725, the same extended meaning of distribution of material resources in Article 39(b) was given by another constitution Bench to uphold Tamil Nadu State Carriages and Contract Carriages (Acquisition) Act. Similar view was reiterated by a three Judge Bench in Madhusudan Singh & Ors. v. Union of India & Ors., [1984] 2 SCC 381. In Air India case the concept of socialism was elaborated and applied to fill in the gaps of the Act to regularise the services of the contract labourers in the establishments of Air India.

It is an established rule of interpretation that to establish Socialist Secular Democratic Republic, the basic structure under the rule of law, pragmatic broad and wide interpretation of the Constitution makes social and economic democracy with liberty, equality of opportunity, equality of status and fraternity a reality to "we, the people of india", who would include the Scheduled Tribes. All State actions should be to reach the above goal with this march under rule of law. The interpretation of the words 'person' 'regulation' and 'distribution' require to be broached broadly to elongate socio-economic justice to the tribals. The word 'regulates' in para (2)(b) of the Fifth Schedule to the Constitution and the title of the Regulation would not only control allotment of land to the Tribes in Scheduled area but also prohibits transfer of private or Government's land in such areas to the non-tribals. While later clause (a) achieves the object of prohibiting transfer inter vivos fay tribals to the non-tribals or non-tribals inter se, the first clauses includes the State Government or being an juristic person integral scheme of para 5(2) of Schedule, The Regulation seeks to further achieve the object of declaring with a presumptive evidence that the land in the Scheduled Areas belongs to the Scheduled Tribes and any transfer made to a non-tribal shall always be deemed to have been made

by a tribal unless the transferee establish the contra. It also prohibits transfer of the land in any form known to law and declared such transfer as void except by way of testamentary disposition by a tribal to his kith and kin/tribal or by partition among them. The regulation and its predecessor law in operation in the respective areas regulate transfer between a tribal and non-tribal with prior permission of the designated officer as a condition precedent to prevent exploitation of the tribals. If a tribal is unwilling to purchase land from a non-tribal, the State Government is enjoined to purchase the land from a non-tribal as per the principles set down in the regulations and to distribute the same to a tribal or a cooperative society composed solely of tribals.

whether lease is a transfer.

Section 105 of the Transfer of Property Act defines 'lease' as a transfer of right to enjoy immovable property made by the transferor to the transferee for a certain period, express or implied, for consideration of price paid or promised etc. to the transferor by the transferee who,accepts the transfer on such terms. Thereby the lease creates a right or an interest in enjoyment of the demised property on terms and conditions contained therein to remain in possession thereof for the duration of the period of lease unless it is determined in accordance with the contract or the statute. It is an encumbrance on the right to be in possession; use and enjoyment of the land by the transferee. Lease is the outcome of separation of ownership and possession. It may be either rightful or wrongful. If it is rightful, it is an encumbrance on the owner's title but if it is wrongful the transferee acquires no lawful right to enjoy the interest therein. Section 11(5) of the Mines and Minerals (Regulation and Development) Act, 1957 brought by State Amendment Act prohibits grant of mining lease in Scheduled Areas in favour of the non-tribals. It reads as under :

> "Notwithstanding anything contained in this Act no prospecting licence or mining lease shall be granted in the Scheduled areas to any person who is not a member of the Scheduled tribes :
>
> Provided that this sub-section shall not apply to an undertaking owned or controlled by the State or Central Government or to a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 which is composed solely of members of Scheduled Tribes.
>
> Explanation: For the purpose of this sub-section;
>
> (a) the expression "Scheduled Areas" shall have the same mean-ing assigned to it in clause (25) of article 366 of the Constitution of India; and
>
> (b) the expression "Scheduled Areas" shall have the same meaning assigned to it in paragraph 6 of the Fifth Schedule to the Constitution of India."

It brings out and effectuates public policy envisaged in the Fifth Schedule of the Constitution and the Regulation. Undoubtedly, it is prospective but the underlying principle would permeate the purpose of interpretation that the State Government, being a person is regulated under Section 3 of

the Regulation prohibit transfer of their land situated in the Scheduled Areas in which mines are discovered or for any other purpose. G.O. Ms. No. 9717Rev. B of 1969 provides that Government land should not be given to non-tribals. The contention of Shri Sudhir Chandra that the Government being empowered to operate the Regulation, by implication, the Regulation does not apply to Government land per force, is untenable in view of the above unambiguous constitutional, legislative and executive policy. The further contention that there is no need for its incorporation and that the Government would be prohibited from transferring for public purpose, is untenable. They do not detract from legal reasoning and purposive interpretation. The transfer of such land for a public purpose, viz., to construct a hospital or to set up a bank by the Government or its instrumentalities and for any public purpose etc., is not prohibited for two reasons, namely, (i) there is no transfer of interest in the Government land in favour of a non-tribal; (ii) there is no transfer of its land in law to itself. The contention, therefore, that the Regulation prohibits transfer of Government land for its public purpose is unsus-tainable. The further contention that even philonthrophic persons imbued with social zeal and spirit to ameliorate the social status and economic position of the tribals, would also be prevented to serve them is untenable. What the Regulation prohibits is the transfer of right, title and interest in the immovable property in scheduled area in favour of non-tribals. There is no prohibition on non-tribals philonthrophist to organise, though tribals and a Cooperative Society composed solely of tribals, actions to ameliorate socio-economic status of the tribals in the Scheduled Area. The further contention that the rich mineral wealth being a national asset cannot be kept unexploited which is detrimental to the national development, is devoid of force. Instead of getting the minerals it exploited through non-tribals, by exploitation of tribals, the minerals could be exploited through an appropriate scheme, without disturbing ecology and forest, by the tribals themselves, either individually or through Cooperative Societies composed solely of the tribes with the financial assistance of the State or its instrumentalities. It would itself would be an opportunity to the tribals to improve their social and economic status and a source of their economic endowment and empowerment and would give them dignity of person, social and economic status and an opportunity to improve their excellence. In the Constituent Assembly, a demand was made for allotment of mining areas in North-Eastern States to the autonomous bodies; the Constituent Assembly instead approved payment of royalty. At many a place, the minerals deposits may be situated in tribal area. In the light of the language used in Section 3 of the Regulation and Section 11(5) of Mining Act, we have examined the question taking aid of the source thereof, i.e., para 5(2)(a) and (b) of the Fifth Schedule and interpreted the word 'person' to include State Government.

The object of Fifth and Sixth Schedules to the Constitution, as seen earlier, is not only to prevent acquisition, holding or disposal of the land in Scheduled Areas by the non-tribals from the tribals or alienation of such land among non-tribals inter se but also to ensure that the tribals remain in possession and enjoyment of the lands in Scheduled areas for their economic empowerment, social status and dignity of their person. Equally exploitation of mineral resources national wealth undoubtedly, is for the development of the nation. The competing rights of tribals and the State are required to be adjusted without defeating rights of either. The Gover-nor is empowered, as a constitutional duty, by legislative and executive action, to prohibit acquiring, holding and disposing of the land by non-tribals in the Scheduled Areas. The Cabinet, while exercising its power under Article 298, should equally be cognizant to the constitutional duty to protect and empower the

tribals. Therefore, the Court is required to give effect to the constitutional mandate and legislative policy of total prohibition on the transfer of the land in Scheduled area to non- tribals.

Right to health has been declared to be a fundamental right in CERC case; right to education is a fundamental right under Article 46 as held by this Court in Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi, [1991] 2 SCC and J.P Unni Krishnan v. State of A.P., [1993] 1 SCC 645; right to pollution-free atmosphere has been held to be a part of right to live under Article 21 as held by this Court in Subhash v. State of Bihar, AIR (1991) SC 420; right to portable water is a fundamental right as held by this Court in State of Karnataka v.Appa Balu Ingale & Ors., [1995] Supp. 4 SCC 469; right to shelter has been held to be a fundamental right in catena of decisions of this Court starting with Olga Tellis case. These are all basic human rights declared under the Universal Declaration of Human Rights and integral part of right to life under Article 21 and other fundamental right provided in Part III of the Constitution.

In the absence of any total prohibition, undoubtedly Article 298 empowers the Governor being the head of the Executive to sanction transfer of its lands. Since the Executive is enjoined to protect social, economic and educational interest of the tribals and when the State leases out the lands in the Scheduled Areas to the non- tribals for exploitation of mineral resources, it transmits the corelative above constitutional duties and obligation to those who undertake to exploit the natural resources should also to improve social, economic and educational empowerment of the tribals. As a part of the administration of the project, the licensee or lessee should incur the expenditure for:

(a) re-forestation and maintenance of ecology in the Scheduled Areas;

(b) maintenance of roads and communication facilities in the Scheduled Areas where operation of the industry has the impact;

(c) supply of portable water to the tribals;

(d) establishment of schools for imparting free education at primary and

secondary level and providing vocational training to the tribals to enable them to be qualified, competent and confident in pursuit of employment;

(e) providing employment to the tribals according to their qualifications in their establishment/ factory;

(f) establishment of hospitals and camps for providing free medical-aid and treatment to the tribals in the Scheduled Areas;

(g) maintenance of sanitation;

(h) construction of houses for tribals in the Scheduled Areas as enclosures; The expenditure for the above projects should be part of his/its Annual Budget of the industry establishment or business avocation/venture.

In this behalf, at least 20 per cent of the net profits should be set apart as a permanent fund as a part of industrial/business activity for establishment and maintenance of water resources, schools, hospitals, sanitation and transport facilities by laying roads etc. This 20% allocation would not include the expenditure for re-forestation and maintenance of ecology. It is needless to mention that necessary sanction for exemption of said amount from income-tax liability, may be obtained; and the Centre should ensure grant of such exemption and see that these activities are undertaken, carried on and maintained systematically and continuously. The above obligations and duties, should be undertaken and discharged by each and every person/industry/licensee/lessee concerned so that the con-stitutional objectives of social, economic and human resource empowerment of the tribals could be achieved and peace and good government is achieved in Scheduled Areas. We have not examined the other Acts in detail but as and when such need arises, they may be examined in the light of the language used therein and the law.

Mining lease of Government land is whether outside the Regulation.

The question then is whether grant of mining leases lands in the Scheduled Areas belonging to the Government is outside the purview of the Regulation? In the light of the aforestated discussion and the con-clusion that the word 'person' would include the State Government, the necessary corollary would be that the transfer of the land in Scheduled Area by way of lease, for mining purpose in favour of non-tribals stands prohibited by para 5{2)

(b) of the Fifth Schedule read with Section 3 of the Regulation. It is on record that the non-tribals individuals have transferred their lease hold interest in the mining leases in favour of some of the respondent- companies. The Government stands prohibited to transfer the mining leases to Corporation aggregate etc. except to its instrumentality. The lease being a transfer of an interest in the land or a right to enjoy such property during subsistence of lease, its transfer stands prohibited. It is well settled position of law, by catena of decisions of this Court, that renewal of lease is in reality a fresh grant of lease, though it is called a renewal because it postulates the existence of a prior lease. It has been brought out from record that some of the respondents-companies have got transfer of mining lease in their favour from the individual lessees. This Court in M/s. Victoria Granites (P) Ltd. v. P. Rama Rao & Ors., JT (1996) 9 SC 303 has held that the transfer of mining leases by an individual in favour of a company is void and in effect, would defeat the object of Article 39(b) of the Constitution and would nullify the object of distributive justice of the largess of the State to accord economic justice to individuals to improve socio-economic status and to secure dignity of persons. Therefore, the transfer of lease or renewal of mining lease in favour of some of the respondents is void as it defeats the constitutional and statutory objectives.

It is seen that in one case, the transfer was claimed to have been made in favour of the State instrumentalities, i.e., A.P.S.M.D. Corporation Ltd. It has already been held that transfer of the Government land in favour of its instrumentalities, in the eye of law, is not a transfer but one of entrustment of its property for public purpose. Since, admittedly, a public Corporation acts in public interest and not for private gain, such transfer stands excluded from the prohibition under para 5(2)(b) of the Fifth Schedule and Section 3(l)(a) of the Regulation, Such transfer or lease, therefore, stands upheld. But a transfer of mining leases to non-tribal natural persons or company,

corporation aggregate or partnership firm etc. is unconstitutional, void and inoperative.

The A.P.S.M.D. is required to exploit minerals in conformity with law, namely, Forest Conservation Act, 1980, E.P. Act etc. ENCLOSURES - WHETHER GOVERNMENT CAN LEASE THE LANDS TO MINING OPERATION It is an admitted position that five enclosures comprise of 426 acres of land occupied by the tribals in those villages. Re- survey started in 1990 jointly by Revenue, Forest and Mining Departments and was completed and the report was made on August 2, 1990. Though 14 villages with five enclosures were notified as Borra reserved forest in GOMs No. 2997 F & A dated October 31, 1966, they stood excluded from reserved forest area. Therefore, the lands in the enclosures being cultivated by the tribals are their patta lands and are entitled to get pattas by the concerned officers. It is conceded on behalf of the respondents that the Government have no power to grant raining leases for these lands situated within the enclosures.

WHETHER LEASES ARE IN VIOLATION OF F.C. ACT OR E.P. ACT In the counter-affidavit filed on behalf of the Government, it is conceded that major part of the lands to which mining leases were granted are situated in reserved forest. It has already been held that transfer of lands situated within scheduled area to mm- tribals is void. It is stated that a part of the land covered by some mining leases is outside the reserved forest. The question, therefore, arises: whether these areas are forest? A controversy has been raised by the respondents that unless the lands are declared either as a reserved forest or forest under the Andhra Pradesh Forest Act, 1967, the F.C. Act has no application. Thereby, there is no prohibition to grant mining lease or renewal thereof by the State Govern-ment. The need for prior approval of the Central Government is not, therefore, necessary. Prior to the Andhra Pradesh Forest Act, 1967, the Madras Forest Act, 1882 was in force. For declaration of reserved forest for the purpose of the Central Forest Act or a State act, the set scheme has been devised, namely, publication in the State Gazette constituting any land as a reserved forest specifying its situation, its limits and a declaration constituting such land as reserved forest. A Forest Settlement Officer gets appointed to consider the objections, if any, from the persons claiming any right, title and interest in any land covered by the notification. Pending consideration thereof, provisions exist in the respective Acts prohibiting clearance of the forest or deforestation of the forest or depletion of forest wealth and resultant consequences. After consideration of objections, if any, and rejection of the objections and claims, subject to preserving the easmentary right of way, water course or use of water or right to pastures or right to forest produce, the Forest Settlement Officer would determine the right of parties and would direct the concerned department to pay compensation determined on the basis of the principles laid in the Act with a right of appeal thereon. Thereafter, a declaration would duly be publish-ed in the Gazette with fixed boundaries that the "aforesaid area are a reserve forest". Similar is the provision and procedure in the Wild Life Sanctuary under Wild Life (Protection) Act, 1972, Therein too, provisions have been made declaring them as sanctuary for preservation and protection of wild life etc. However, the right to residence and right to collect forest produce, forest goods or agriculture etc. to the tribals is regulated under the appropriate provisions.

The words 'forest' or 'forest land' have not been defined in the A.P. Act or the Central Forest Act. In collins English Dictionary (1979 Edn.) the word 'forest' has been defined as page 568 as "a large wooded area having a thick growth of trees and plants, the trees of such an area, something

resembling a large wooded area especially in density''. Shorter Oxford English Dictionary defines 'forest' as "an extensive tract of land covered with trees and undergrowth, sometimes intermingled with pasture". In Webster's comprehensive Dictionary (International Edn.) at page 495, 'forest' has been defined as "a large tract of land covered with a natural growth of trees and underbrush, in English Law wild land generally belong- ing to the crown and kept for the protection of game, Of, pertaining to, or inhabiting woods or forest. To overspread or plant with trees; make a forest of. The 'forest cover' means "The sum total of vegetation in a forest; more especially, herbs, shrubs and the litter of leaves, branches". 'Forest reserve' for the different manners 'a tract of forest land set aside by Government order for protection and cultivation". According to Stroud's Judicial Dic-tionary (fifth ed.), Vol. 2, at page 1014 'forest' means "a place privileged by royal authority or by prescription for the peaceable abiding and nourishment of the beats or birds of the forest, for resort of the King; a subject may hold a forest by grant from the crown; by the grant of a forest in a man's own ground, not only the privilege but the land itself passes; within the bounds and within the regard". Black's law Dictionary (6th Edn.) defines 'forest' at page 649 as 'A tract of land covered with trees and one usually of considerable extent". Chambers's Twentieth Century Dictionary defines the expression forest at page 415 as 'a large uncultivated tract of land covered with trees and underwood: woody ground and rude pasture"

> It would thus be seen that 'forest' bears extended meaning of a tract of land covered with trees, shrubs, vegetation and undergrowth inter-mingled with trees with pastures, be it of natural growth or manmade forestation. The FC Act, as amended by 1988 Act was enacted to check deforestation and conservation of forest. Sub-section (2) with a non-obstante clause on deforestation of forest or use of forest land for non-forest purposes; regulates the forest and provides that notwithstanding any other law for the time being in force in the State, no State Government or other authority shall make, except with prior approval of the Central Government,
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> (i) any order directing that any reserved forest or any portion thereof shall cease to be a reserved forest, (ii) that any forest land or portion thereof may be used for any non-forest purpose; (iii) that any forest land or any portion thereof may be assigned, by way of lease or otherwise, to any private person or to any authority or corporation, agency or any other organisation, not owned, managed or controlled by the Government, (iv) that any forest land or any portion thereof may be cleared or trees which have grown natural in the land or portion for the purpose of using it for reforestation. Clauses (iii) and (iv) were added by Amendment Act 69 of 1988 w.e.f. December 19, 1988. The explanation thereto of non-forest purpose was defined to mean the breaking up or clearing of any forest land or portion thereof for the cultivation of.....but does not include any work relating to ancillary to conservation development and management of forest and wild life, namely, establishment of check-posts, fire lines.....or other like purposes. Section2, therefore, prohibits de-reservation of the forest or use of any forest land for any non-forest purpose or assignment by way of lease or otherwise of any portion of land to any private person other than Government controlled or owned, organised or managed by the State Government agency; it prohibits clearance of trees or natural growth in the forest

> land or any portion thereof to use it for reforestation, except for preservation. Breaking up or clearance of forest land or a portion thereof is amplified to be of non-forest purpose. The object of the F.C. Act is to prevent any further deforestation which causes ecological imbalance and leads to environmental degradation. It is, therefore, necessary for the State Government to obtain prior permission of the Central Government for (1) dereservation of forest; and (2) the use of forest land for non-forest purpose. The prior approval of the Central Government, therefore, is a condition precedent for such permission. The State Governments are enjoined by FC Act, with power coupled with duty, to obtain prior approval of the Central Government. The leases/renewal or leases otherwise are good.

The Environment (Protection) Act, 1986 (for short, the 'EP Act') was enacted to protect and improve environment and prevention of hazards to human beings, other living creatures, lands and property. Section 3 of EP Act enjoins the Central Government that it should take such measures as it deems necessary or expedient for the purpose of protecting and improv-ing the quality of the environment and preventing, controlling and abating environmental pollution. It would, therefore, be clear that the meaning of the expression 'forest land' in the respective Acts requires extended mean- ing given so as to preserve forest land from deforestation to maintain ecology and to prevent environmental degradation and hazardous effects on right to life. In Virender Gaur Ors. v. State of Haryana & Ors., [19951 2 SCC 577 this Court in paragraph 7 at pages 580-81 has held that environmental, ecological, air, water pollution, etc. should be regarded as amounting to violation of right to life assured by Article 21. Hygienic and environment are an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment. Environmental protection, therefore, has now become a mat-ter of grave concern for human existence. Promotion of environmental protection implies maintenance of eco-friendly environment as a whole comprising of man-made and the natural environment. It is, therefore, the duty of every citizen and industry to conserve, and if it becomes inevitable to disturb its existence, it is concomitant duty to reforest and restore forestation; duty of the State to coordinate with all concerned and should ensure adequate measures to promote, protect and improve both man-made, natural environment floura and founa as well as bio-diversity.

In Rural Litigation and Entitlement Kendra v. State of U.P., [1989] Supp. 1 SCC 504 in paragraph 14, this Court had observed that conscious-ness regarding environmental upkeep and cognizance of ecological importance had in recent times entered into governmental activities. The EP Act protects to upkeep forest land or reserved forest, prevents deforestation, encourages forestation and takes steps as are necessary to preserve ecology. In paragraph 23, it was held that mining activity was held uncongenial to ecology and environment. Trees are friends of mankind and forests arc inevitable necessity for human existence, healthy living and the civilisation to thrive and flourish. The need of protection and preservation of forests is fundamental duty of every citizen and all persons in comprehensive sense, i.e., juristic as well. The problem of forest preservation and protec-tion was no more to be separated from the life style of tribals. The approach required is shift from the dependence on law and executive implementation to dependence on the conscious and voluntary participa-tion of all persons. Maintenance of ecology is the primary duty of the Stale to prevent any further degradation of the ecology and environment and equally is the duty of every citizen. All

persons conjointly should allow regeneration of forest as an essential step for healthy life. This Court in Chhetriya Pardushan Mukti Sangarsh Samiti v. State of U.P. & Ors., [1990] 4 SCC 449 and Subhash Kumar v. State of Bihar & Ors., [1991] 1 SCC 598, had held that the protection to environment is the duty of the State. In Sachidanand Pandey v. State of West Bengal, [1987J 2 SCC 295, it was held that it is the fundamental duty of every citizen under Article 51A(g) and Article 48A of the Constitution to protect the forest and environment. The same view was reiterated in State of Bihar v. Murad Ali Khan & Ors., [1988] 4 SCC 655 and M.C. Mehta v. Union of India & Ors., [1992] 1 SCC 358. On the positive obligation to protect environment, this Court had emphasised it in M.C. Mehta's case (supra) and Indian Council for Enviro-Legai Action v. Union of India & Ors., [1995] 3 SCC 77. Industries which created environment inimical to the human existence, were directed to be disclosed in Rural Litigation and Entitlement Kendra v. State of U.P., [1989] Supp. 1 SCC 504; Tarun Bharat Singh Alwar v. Union of India & Ors., [1992] Supp. 2 SCC 448; Vellore Citizens' Welfare Forum v. Union of India & Ors., [1996] 5 SCC 647 and Indian Council for Enviro-Legal Action case (supra). In Particular, in Vellore Citizens case, this court had pointed out that the sustainable development consists in preservation of the person without compromising the ability of the future generation to meet their needs. Sustainable development is a balancing concept between ecological development and industrialisation. Therefore, with a view to improve the quality of human life, while living within the carrying capacity of the subordinate ecology system, sustainable development should be maintained by the industry and the State should ensure environmental protection and prevent degradation thereof. As a facet thereof, as the principle of "the polluter pays", this Court awarded damages for causing deforestation and directed development of eco-friendly environment.

Mining operations, though detrimental to forest growth, are part of layout of the industry, provision should be made for investment or in- frastructural planning to reforest the area; and to protect environment and regenerate forest. The Ministry of Environment and Forest and all Secretaries of all the State Governments holding charge of Forest Depart- ments, have a duty to prevent mining operations affecting the forest. It is significant to note that, whether mining operations are carried on within the reserved forest or other forest area. It is their duty to ensure that the industry or enterprise does not denude the forest to become a menace to human consistence nor a source to destroy flora and fauna and biodiversity. The provisions of the FC Act get attracted to ensure preservation of forest. In Garwal case, this Court, prohibited mining operations. In Rural Litiga-tion and Entitlement Kendra v. State of U.P, & Ors., [1989] Supp. 1 SCC 537 and State of H.P. & Ors. v. Ganesh Wood Products & Ors., [1995] 6 SCC 363 it expressed anxiety to ensure eco-friendly environment. In the later case, two Judges Bench applied provisions of EC Act and EP Act and held that the application of sustainable development requires that appropriate assessment should be made of the forest wealth and the establishment of industries based on forest produce; other working should also be monitored closely to maintain the required ecological balance. No distinc-tion can be made between the Government forests and private forests in the matter of forest wealth of the nation and in the matter of environment and ecology. The same view was taken by Andhra Pradesh High Court in M/s. Colorock Pvt. Ltd. Vijayawada v. The Director of Mines & Geology, Government of A.P., (1983) 3 ALT 39; M/s. Anupama Minerals v. Union of India & Ors., AIR (1986) AP 225; M/s. Yashwant Stone Works v. State of U.P., AIR (1988) All 121; Upendra Jha v. State of Bihar, AIR (1988) Patna 263 and Ambalal Manibhai Patel & Ors. v. State of Gujarat, (1986)

27(2) Guj. LR 1073.

It is well settled law that mining operation is a non-forest purpose. In Ambika Quarry Works & Anr. v. State of Gujarat & Ors., [1987] 1 SCR 562, a Bench of three Judges of this Court had held that the renewal of a mining lease, without prior approval of the Central Government was in violation of Section 2 of the FC Act. The same view was reiterated in State of M.P. & Ors. v. Krishnadus Tikaram, [1995] Supp. 1 SCC 587 and Tarun Bharat Sangh, Alwar v. Union of India & Ors., [1993] Supp. 3 SCC 115. In Tarun Bharat Sangh's case, it was, however, held that even for mining operations outside the Tiger Reserved Forest declared as protected area, prior permission of the Central Government was necessary. State of Bihar v. Bansi Ram Modi & Ors., [1985] Supp. 1 SCR 345, strongly relied on by the Division Bench in Sainatha's case and learned counsel for the respon-dents, was over-ruled by this Court in Ambika Quarry Work's case. There-fore, the decision no longer operates as a ratio decidendi. The same view was taken by the High Courts in the above judgments. It would, therefore, be mandatory that even renewal of mining leases without prior approval of the Central Government, is void. In M/s. Victorian Granites case, sub-lease of the mining leases, even with prior approval and grant by the State Government, was held to be illegal.

It is seen from the evidence that the mining leases were granted by the State Government or were transferred and re transferred with the sanction of the State Government from private individuals to juristic per-sons, the partnership firms or companies. The lands with mining area are situated either in the reserved forest or forest land or within the Scheduled Area. Therefore, all the mining leases or renewals thereof are in violation of the Fifth Schedule. Equally, mining leases/renewals of mining leases by the State Government are in violation of the Regulation 3(l)(a) read with Section 3(2) of the Regulation and F.C. Act. Therefore, they are all void.

Shri Sudhir Chandra in his written submissions has stated that in respect of the lands leased to the 19th respondent, a sum of Rs. 350 crores has been invested for manufacturing of "High Purity Sea Water" magnified by using 100% import high technology. The said product saves annually 70 crores of foreign exchange. It is essential for modernisation of steel industry. The product also has wide application for major core industry saving large foreign exchange for the country. He has also stated that the mining operations are carried on in plain area only and thereby forest area is not affected. However, since these averments have been made for the first time in the written submissions, after Court reserved its decision, we are deprived of the advantage of having the response of the State Govern-ment, which in fact, has not taken any active interest in this litigation. We, therefore, feel it necessary that the Chief Secretary of the Andhra Pradesh State should constitute a committee consisting of himself, Secretary (In-dustry), Secretary (Forest), Secretary (Tribal Welfare/Social Welfare) to have the factual information collected and consider whether it is feasible to permit the industry to carry on mining operations. If the Committee so opines, the matter may be placed before a Cabinet sub-Committee consisting of Minister, Minister for Industries, Minister for Forests and Minister of Tribal Welfare to examine the issue whether licences could be allowed to continue until they expire by efflux of time or whether is expedient to prohibit further mining operations in the light of Section 11 (5) of the Mining Act, to take appropriate action in that behalf and submit report to this Court on the actions so taken.

In cases where the similar Acts in other Stales do not totally prohibit grant of mining leases of the lands in the Scheduled Area, similar Committee of Secretaries and State Cabinet sub- Committees should be constituted and decision taken thereafter.

Before granting leases, it would be obligatory for the State Government to obtain concurrence of the Central Government which would, for this purpose, constitute a sub-Committee consisting of the Prime Minister of India, Union Minister for Welfare, Union Minister for Environment so that the States Policy would be consistent with the policy of the nation as a whole.

It would also be open to the appropriate legislature, preferably after a thorough debate/conference of all the Chief Ministers, Ministers holding the concerned Ministry and the Prime Minister and the Central Ministers concerned, to take a policy decision so as to bring about a suitable enactment in the light of the guidelines laid down above so that there would emerge a consistent scheme throughout the country, in respect of the tribal lands under which national wealth in the form of minerals, is located.

The State Government, therefore, is directed to ensure that all concerned industrialists, be they natural or juristic person stop forthwith mining operations within the scheduled area, except where the lease has been granted to the State Undertaking, i.e., A.P.S.M.D. Corporation; they should report compliance of this order to the Registry of this Court within six months of the receipt of this judgment. The lessees of mining leases are directed not to break fresh mines; however, in the meanwhile, they are entitled to remove the minerals already extracted and stocked in the reserved forest area within four months time from today. All concerned authorities are directed to ensure compliance thereof. Even the State Undertaking carrying the mining operations, would be subject to the regulations under the FC Act and EP Act. It would be open to the State Government to organise Co-operative Societies composed solely of the Scheduled Tribes to exploit mining operations within the Scheduled area subject to the compliance of the FC Act and EP Act.

The appeals of Samatha are accordingly allowed. The Judgment of the High Court stands set aside and directions are issued accordingly.

The appeal of Hyderabad Abrasives and Minerals (P) Ltd. stands dismissed since their licence has already expired by efflux of time and grant of renewal is prohibited under F.C. Act and Section 11(5) of the Mining Act. No costs.

S. SAGHIR AHMAD, J. Leave granted.

I have the advantage of going through the Judgments prepared separately by Esteemed Brothers Ramaswamy and Pattanaik. I am inclined to agree with Brother Ramaswamy, for the reasons which I am presently setting out hereinbelow.

Tribals were the first settlers in this country but they were gradually pushed back to the forests and hills by subsequent settlers who were non- tribals. The forests and hills provided a natural barrier and isolated the tribals from people living on the plains. On account of their isolation, they remained

illiterate, uneducated, unsophisticated, poor and destitute and developed their own society where they allowed themselves to be governed by their own primitive and customary laws and rituals.

2. Successive governments who ruled India from medieval times to modern times (British Period) allowed these tribals and aboriginals to live in complete isolation and allowed them to follow their own traditional culture, social customs and animistic tribal faiths. There were many dangers in subjecting them to normal laws and they were, therefore, governed by special laws.

3. The Tribal Areas or Agency Areas of the Madras Presidency were governed by Gunjam and Vizagapatnam Act of 1839. Then came the Scheduled Districts Act 14 of 1874 which was followed by the Agency Tracts and Land Transfer Act, 1 of 1917. Section 4(1) and (2) of this Act provided as under :

> "4(1). Notwithstanding any rule of law or enactment to the con-trary, any transfer of immovable property situated within the agen-cy Tracts by a member of a hill tribes shall be absolutely null and void unless made in favour of another members of a hill tribe, or with the previous consent in writing of the Agent or of any other prescribed officer.
>
> (2) Where a transfer of property is made in contravention of sub-section (1), the Agent or any other prescribed Officer may on application by any one interested, decree ejectment against any person in possession of the property claiming under the transfer and may restore it to the transferor or his heirs."

4. Under the Government of India Act, 1935, the administration of the Scheduled Districts was exclusively vested in the Governor of the Province. Sub-sections (1) and (2) of Section 92 of the Government of India Act, 1935 provided as under :

> "92. (1) The executive authority of a Province extends to excluded and partially excluded areas therein, but, notwithstanding anything in this Act, no Act of the Dominion Legislature or of the Provincial Legislature shall apply to an excluded area or a partially excluded area, unless the Governor by public notification so directs, and the Governor in giving such a direction with respect to any Act may direct that the Act shall in its application to the area, or to any specified part thereof, have effect subject to such exceptions or modifications a.s he thinks fit.
>
> (2) The Governor may make regulations for the peace and good government of any area in a Province which is for the time being an excluded area, or a partially excluded area, and any regulations so made may repeal or amend any Act of the Dominion Legisla-ture, or of the Provincial Legislature, or any existing Indian Law, which is for the time being applicable to the area in question. Regulations made under this sub-section shall be submitted forthwith to the Governor-General and until assented to by him shall have no effect."

5. In B. Shiva Rao's Study Volume of The Framing of India's Constitution"

> it is stated as under :
>
> "There were two dangers to which subjection to normal laws would have specially exposed these peoples, and both arose out of the fact that they were primitive people, simple, unsophisticated and frequently improvident. There was a risk of their agricultural land passing to the more civilized section of the population, and the occupation of the tribals was for the most part agricultural : and, secondly, they were likely to get into the "wiles of the moneylender", the primary aim of government policy then was to-protect them from these two dangers and preserve their tribal customs; and this was achieved by prescribing special procedures applicable to these backward areas. At first individual laws were enacted, applicable to particular areas, which, among other things, prescribed simple and elastic forms of judicial administrative pro-cedures. The Scheduled Districts Act, enacted in 1874, appears to have been the first measure adopted to deal with these areas as a class. That Act enabled the executive to extend any enactment in force in any part of Birtish India to a "scheduled district"

with such modifications as might be considered necessary. In other words, the executive had power to execlude these areas from the normal operation of ordinary law and give them such protection as they might need.

The Montagu-Chelmsford Report of 1918 contained a brief reference to these areas : it suggested that the political reforms contemplated for the rest of India could not apply to these back-ward areas where the people were primitive and "there was no material on which to found political institutions". The typically backward tracts were therefore to be excluded from the jurisdic-tion of the reformed Provincial Governments and administered personally by the heads of the Provinces. In the Government of India Act of 1919 these tracts were divided into two categories. Some areas were considered so backward that they were wholly excluded from the scope of the reforms. The effect of this was that neither the Central nor the Provincial Legislature had power to make laws applicable to these areas and the power of legislation was vested in the Governor acting with his Executive Council, the Ministers being excluded from having any share in the respon-sibility for the administration of these areas. Proposals for expen-diture in these tracts were not required to be submitted to the vote of the Legislative Assembly; and no question could be asked and no subject relating to any of these tracts could be discussed in the Assembly without the Governor's sanction."

6. It is further stated as under :

> "The object of Government policy in relation to these areas, inhabited by backward, tribal and aboriginal populations, was clearly visualized by the Simon Commission. Until then the aim had primarily been to give the primitive inhabitants of these areas security of land tenure, freedom in the pursuit of their traditional means of livelihood, and a reasonable exercise of their ancestral customs : not self-

determination or rapid political advance, but experienced and sympathetic handling and protection from economic subjugation by their neighbours. The Commission realized that perpetual isolation from the main currents of progress would not be a satisfactory long-term solution : and that it would be necessary to educate these people ultimately to become self-reliant. In this direction practically nothing had been achieved. The Commission observed :

The responsibility of Parliament for the backward tracts will not be discharged merely by securing to them protection from exploitation and by preventing those outbreaks which have from time to time occurred within their borders. The principle duty of the administration is to educate these people to stand on their own feet, and this is a process which has scarcely begun.

The Commission recognized this problem to be one of consid-erable magnitude and complexity. On the one hand it was loo large a task to be left to the efforts of missionary societies and individual officials, since coordination of activity and adequate funds were required. On the other hand the typically backward tract was deficit area and "no provincial legislature (was) likely to possess either the will or the means to devote special attention to its particular requirements". In these circumstances the Commission recommended that the responsibility for the backward classes would be adequately discharged only if it was entrusted to the Centre. It was recognized that it would not be a practicable arrangement if centralization of administrative authority in these areas led to a situation in which these areas would be separated from the Provinces of which they were an integral part : and in order to meet this difficulty the Commission suggested that even though there would be a central responsibility, the backward tracts should not be separated from the Provinces but that the Central Government should use the Governors as degree of backwardness, it could be laid down by rules how far the degree of backwardness, it could be laid down by rules how far the Governor would act in consultation with his Ministers in the discharge of these agency duties. The proposal for centralizing the administration of these areas was however not adopted in the constitutional reforms of 1935. Under the Government of India Act of 1935, these backward areas were classified as excluded areas and partially excluded areas. A small number of excluded areas-the total extent of these was about 18,600 square miles in Assam and 10,000 square miles in the rest of Imlia-in the Provinces of Madras, Bengal, the North-West Frontier Province, the Punjab and Assam, were placed under the personal rule of the Governor acting in this discretion : and while partially excluded areas were within the field of ministerial responsibility, the Governors exercised a special responsibility in respect of the administration of these areas; and they had the power in their individual judgment to overrule their Ministers if they thought fit to do so. No Act of the Federal or Provincial Legislature would apply to any of these areas : but the Governors had the authority to apply such Acts with such modifications as they considered necessary.

> In addition to these excluded and partially excluded areas, there were in the territory of India certain 'tribal areas", which were defined in the Government of India Act, 1935, as "areas along the frontiers of India or in Baluchistan which are not part of British India or of Burma or of any Indian State or of any foreign State". The position of these areas was even more peculiar. In terms of the definition they did not form part of the territory of British India and neither the Parliament of Britain nor the Legislatures of British India claimed or exercised any direct legislative powers over these years. The powers exercisable in these areas were described as arising out of "treaty, grant, usage, sufferance or otherwise"

and the Act of 1935 contained a specific authorization enabling these powers to be exercised as part of the executive authority of the Central Government, by the Governor-General acting in his discretion, and therefore outside the area of responsibility of the Ministry."

7. It is further stated as under :

> "The Cabinet Mission's statement of May 16, 1946, mentioned the excluded and partially excluded areas and the tribal areas as requiring the special attention of the Constituent Assembly, The Advisory Committee on Fundamental Rights and Minorities, to be set up at the preliminary meeting of the Assembly, was to contain due representation of all the interests affected; and one of its functions was to report to the Constituent Assembly on a scheme for the administration of tribal and excluded areas at its meeting on February 27, 1947, the Advisory Committee set up three sub- committees - one to consider the tribal and excluded and partially excluded areas in Assam : one to consider the tribal areas in the North-West Frontier Province and Baluchistan : and the third sub-committee to consider the position of excluded and partially excluded areas in the Provinces other than Assam."

8. The Sub-Committee on Assam submitted its report on 28th July, 1947 while the other Sub-Committee on the Excluded and Partially Ex-cluded Areas other than Assam submitted its interim report on 18.8.1947 and final report in September, 1947. The Joint meeting of the two Sub-committees was held in August, 1947. The Joint meeting summed up the problems as under :

> "The areas inhabited by the tribes, whether in Assam or else-where, are difficult of access, highly malarial and infested also in some cases by other diseases like yaws and venereal disease and lacking in such civilizing facilities as roads, schools, dispensaries and water supply. The tribes themselves are for the most part extremely simple people who can be and are exploited with ease by plainsfolk, resulting in the passage of land formerly cultivated by them to money-lenders and other erstwhile non- agriculturists. While a good number of superstitions and even harmful practices are prevalent among them, the tribes have their own customs and way of life with institutions like tribal and village panchayats or councils which are very effective in smoothing village administra-tion. The sudden disruption of the tribals' customs and ways by exposure to the impact of a more complicated and sophisticated manner of

life is capable of doing great harm. Considering past experience and the strong temptation to take advantage of the tribals' simplicity and weaknesses; it is essential to provide statutory safeguards for the protection of the land which is the mainstay of the aboriginal's economic life and for his customs and institutions which, apart from being his own, contain elements of value",

9. It would be useful at this stage to reproduce further the two passages from Shri Rao's Book relating to the recommendations :

"From the beginning the objectives of the Government's policy in regard to the tribes and tribal areas were primarily directed to the preservation of their social customs from sudden erosion and to safeguarding their traditional vocations without the danger of their being pauperized by exploitation by the more sophisticated elements of the population. At the same time it was recognized that this stage of isolation could not last indefinitely : a second and major objective was therefore laid down, that their educational level and standard of living should be raised in order that they might in course of time be assimilated with the rest of the popula-tion. From this point of view the sub-committee was of the opinion that the policy of exclusion and partial exclusion had not yielded much tangible result in the progress of the aboriginal areas towards the removal of their backward condition or in their economic and educational betterment. The sub-committee did not therefore find it advisable to abolish the administrative distinction between the backward areas and the rest of the country; and it recommended that while certain areas like Sambalpur in Bihar and Angul in Orissa need no longer be treated differently from the regularly administered areas, there were other areas which needed a simplified type of administration to protect the aboriginal people from exposure to the complicated machinery of the ordinary law courts and save them from the clutches of the moneylender who took advantage of their simplicity and illiteracy, deprived them of their agricultural land, reduced them to a state of virtual serfdom. The general position, according to the sub-committee, was that the areas predominantly inhabited by tribal people should be known as "Scheduled Areas" (the intention being that these areas should figure in a schedule to a notification) and special administrative arrangements made in regard to them.

At the same, time having found the treatment of exclusion and partial exclusion to have proved a failure, the sub-committee recommended that the responsibility for the betterment and wel-fare of these areas should be squarely that of the Provincial Governments and that accordingly the Governors should not have any special reserved or discretionary powers in regard to these areas. But the ultimate responsibility was to be that of the Centre, both for drawing up plans for the betterment of these areas and for providing the necessary finances. In order to ensure that the requirements of these areas were given full consideration, the sub-committee recommended that the Constitution should provide for the setting up in each Province of a body which would keep the Provincial Government constantly in

touch with the needs of the aboriginal tracts in particular and with the welfare of the tribes in general. This body was to be known as a Tribes Advisory Council, which it was proposed should have a strong repre-sentation of the tribal element.

The Tribes Advisory Council would primarily advise the government in regard to the application of laws to the Scheduled Area : no laws affecting the following matters would apply if the Tribal Advisory Council considered such a law unsuitable :

(1) Social matters; (2) occupation of land, including tenancy laws, allotment of land and setting apart of land for village pur-poses; (3) village management, including the establishment of village panchayats.

The provisions for the other States were more detailed. In their case, the advisory body was known as the Tribes Advisory Council. The membership of the Tribes Advisory Council in each of the States was to be between ten and twenty- five, of whom three-fourths were to be elected representatives of the Scheduled Tribes in the Legislative Assembly of the State as in the case of the Punjab and the United Provinces; it was laid down as the duty of the Tribes Advisory Council generally to advise the Government on all matters pertaining to the administration of the Scheduled Areas and the welfare of the tribes. The State Government was statutorily enjoined to give effect to the advice of the council if it considered that an Act, whether of Parliament or of the State Legislature, relating to the following matters, was unsuitable for, or required modification in, its application to a Scheduled Areas :

(a) marriage; (b) inheritance of property; (c) social customs of tribes;

(d) land, including rights of tenants, allotment of land and reservation for any purpose; (e) village administration and village panchayats.

It was made obligatory that the Governor should act according to the advice of the Tribes Advisory Council on the application of Acts relating to these matters. He was not bound to accept the advice of the council on laws relating to other matters. The State Government was also empowered to make regulations applicable to a Scheduled Area after consulting the council. As in the case of East Punjab and the United Provinces, such regulations would make provision for the trial of offences other than those punishable with death, transportation for life or imprisonment for five years or more; such regulations could also provide for the trial of disputes "other than those arising out of any such laws as may be defined in such regulations".

The transfer of land in a Scheduled Area from a tribal to a non-tribal was forbidden; and the State Government was also prohibited from allotting State land in a Scheduled Area to non-tribals except in accordance with rules made after consulting the Tribes Advisory Council Likewise, if advised by the council, the Governor was obliged to license moneylending, prescribing such conditions as were considered necessary; and the breach of these conditions would be an offence. In order that public attention might be focussed on the development work carried out in these areas, the State Government was required to show separately in its financial statement the revenues and

expenditure pertaining to these areas.

10. The Sub-Committee in its report with regard to the land in Tribal (Scheduled) Area, provided as under :

> "25, Land : The importance of protection for the land of the tribals has been emphasised earlier. All tenancy legislation which has been passed hitherto with a view to protecting the aboriginal has tended to prohibit the alienation of the tribal's land to non-tribals. Alienation of any kind, even to other tribals, may have to be prohibited or severely restricted according to the different stages of advancement. We find however that provincial Govern-ments are generally alive to this question and that protective laws exist. We assume that these will continue to apply and as we have made special provision to see that land laws are not altered to the disadvantage of the tribal in future, we do not consider additional restrictions necessary. As regards the allotment of new land for cultivation or residence, however, we are of the view that the interests of the tribal need, to be safeguarded in view of the increasing pressure on land everywhere. We have provided accord-ingly that the allotment of vacant land, belonging to the State in Scheduled Areas should not be made except in accordance with special regulations made by the Government on the advice of the Tribes Advisory Council."

11. In Part-II of Appendix C to this report, it was indicated as under :

> "Vacant land in a Scheduled Area which is the property of the State shall not be allotted to a non-tribal except in accordance with rules made by the Provincial Government in consultation with the Tribes Advisory Council."

12. The recommendations of the two Sub-Committees were not considered by the Constituent Assembly in its Session in July, 1947, when the broad principles of the Constitution were settled since, as explained by Dr. Ambedkar, they were received too late. The Drafting Committee however, considered these proposals at the stage of drafting and suitable provisions including Schedule V & VI were included in the Draft Constitu-tion of February, 1948 in which it was indicated that the transfer of land in Scheduled Area From Tribal to non-Tribal was forbidden; and the State Government was also prohibited from allotting the State land in the Scheduled Area to Non-Tribal except in accordance with the Rules which may be made by the Governor after consulting the Tribes Advisory Council.

13. The Draft Fifth Schedule prepared by the Drafting Committee with regard to Article 189(a) and 190(1) which related to the administration and control of Scheduled Areas and Scheduled Tribes consLsted of several parts. Part I contained the general provision that the executive power of the State specified in Part I of the First Schedule shall extend to the Scheduled Areas therein. It further provided that the Governor of each State having Scheduled Areas therein shall annually, or

whenever so re- quired by the Government of India, may report to the Government regard-ing the administration of the Scheduled Areas and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas.

14. Part II applied to the States of Madras, Bombay, West Bengal, Bihar, the Central Provinces and Berar, and Orissa. Clause 5 specified the laws applicable to Scheduled Areas in those states. It provided as under :

> "5. Law applicable to scheduled areas : (1) The Governor may, if so advised by the Tribes Advisory Council for the state, by public notification direct that any particular Act of Parliament or of the legislature of the State shall not apply to a scheduled area or any part thereof in the State subject to such exceptions and modifica-tions as he may with the approval of the said Council specify in the notification.
>
> Provided that where such Act relates to any of the following subjects, that is to say-(a) marriage;
>
> (b) inheritance of property;
>
> (c) social customs of the tribes;
>
> (d) land, other than lands which are reserved forest under the Indian Forest Act. 1927 or under any other law for the time being in force in the area in question, including rights of tenants, allot-ment of land and reservation of land for any purpose;
>
> (e) any matter relating to village administration including the establishment of village panchayats;

the Governor shall issue such direction when so advised by the Tribes Advisory Council.

(2) The Governor may, after consultation with the Tribes Advisory Council for the State, make regulations for any scheduled area in the State with respect to any matter not provided for by any law for the time being in force in such area.

(3) The Governor may also make regulations for any scheduled area in the State with respect to the trial of cases relating to offences other than those which are punishable with death, transportation for life or imprisonment for five years or upwards or relating to disputes other than those arising out of any such laws as may be defined in such regulations, and may by such regulations empower the headmen or panchayats in any such area to try such cases.

(4) Any regulations made under this paragraph when promulgated by the Governor shall have the same force and effect as any Act of the appropriate Legislature which applies to such area and has been enacted by virtue of the powers conferred on that legislature by this Constitution."

15. Clause 6 which dealt with the alienation and allotment of land to Non- Tribals in Scheduled Areas provides as under :

> "6. Alienation and allotment of lands to non-tribals in scheduled areas; (1) it shall not be lawful for a member of the Scheduled Tribes to transfer any land in a scheduled area to any person who is not a member of the Scheduled Tribes;
>
> (2) No land in a scheduled area vested in the State within such area is situate shall be allotted to, or settled with, any person who is not a member of the Scheduled Tribes except in accordance with rules made in that behalf by the Governor in consultation with the Tribes Advisory Council for the State."

16. Part III was applicable to the State of United Provinces (now known as Uttar Pradesh). Para 12 provided as under :

> "(2) The Governor may also make regulations so as to prohibit the transfer or any land in a scheduled area in the State by a member of the Scheduled Tribes to any person who is not a member of the Scheduled Tribes.
>
> (3) Any regulations made under this paragraph when promul-gated by the Governor shall have the same force and effect as any Act of the appropriate Legislature which applies to such area and has been enacted by virtue of the powers conferred on that Legis-lature by this Constitution."

17. Part IV related to the State of East Punjab Clause 17 provided as under :-

> "(2) The Governor may also make regulations so as to prohibit the transfer of any land in a scheduled area in the State by a member of the Scheduled Tribes to any person who is not a member of the Scheduled Tribes.
>
> (3) Any regulations made under this paragraph when promul-gated by the Governor shall have the same force and effect as any Act of the appropriate Legislature which applies to such area and has been enacted by virtue of the powers conferred on that Legis-lature by this Constitution."

18. The important provision to be noticed is that although in respect of States of Madras, Bombay, West Bengal, Bihar, the Central Provinces and Berar, and Orissa, a total ban was placed on the transfer of land by a member of the Scheduled Tribe to a person who is not a member of the Scheduled Tribe, it was provided, so far as allotment of Government land was concerned, that no land in a Scheduled Area could be allotted to or settled with a Non-Tribal except in accordance with the rules made in that behalf by the Governor after consulting the Tribes Advisory Council. This indicated that if a rule was made by the the Governor in that regard, land in a Scheduled Area which was vested in the Government, could be allotted to the Non-Tribal. It is obvious that the powers of allotment could not be exercised so long as the rules were not made.

19. No provision, so far as allotment of Government land was con-cerned, was made for the State of United Provinces and West Bengal for which the only provision made was that the Governor may make regula-tions so as to prohibit the transfer of land in a Scheduled Area by a member of the Scheduled Tribe to any person who is not a member of the Scheduled Tribe.

20. It also requires to be noticed that the Regulations made by the Governor for all these States to which Schedule Fifth was applicable were to have the same force and effect as an Act of the appropriate Legislature. But this was not stated in respect of rules which could be made by the Governor under Clause 6(2) of the Fifth Schedule applicable to State of Madras, Bombay, West Bengal, Bihar, the Central Provinces and Berar, and Orissa.

21. The comments and suggestions made on the Draft Constitution including the Fifth Schedule prepared by the the Drafting Committee, so far as relevant paras, namely, Para 5, Para 6, Para 12 and Para 17 of the Fifth Schedule, are concerned, and the decision of the Drafting Committee thereon are quoted below :-

> "PARAGRAPH 5 The Government of Orissa has questioned the propriety of the provisions contained in sub-paragraph (1) of paragraph 5 in Part II of the Fifth Schedule and has made the following comments :
>
> Under Section 92(1) of the Government of India Act, 1935 no Act of the Federal or Provincial Legislature applies to a partially excluded area unless the appropriate Provincial Government so directs by a notification. The plan followed in the Draft Constitution of India is, however, fundamentally different. The idea underlying paragraph 5(1) of Part II of the Fifth Schedule to the Draft Constitution is that as soon as an Act of the Federal or the Provincial Legislature is passed, it will apply automatically to all Scheduled Areas unless the Governor on the advice of the Tribes Advisory Council directs, in respect of any particular legislation, either that it shall not apply to any specified Scheduled Areas or that it shall apply to such areas, subject to specified excep- tions and modifications. Although on the whole the Govern-ment of Orissa prefer the plan indicated in para 5(1) of Part II of the Fifth Schedule to the Draft Constitution to the provision of section 92(l) of the Government of India Act, 1935, they apprehend that difficulties, mainly of an ad- ministrative nature, might arise out of the inevitable time lag between the passing of an Act by either the Dominion or the State Legislature and the decision of the Governor cither that the Act shall not apply to any Scheduled Area or that in its application to such an area, it shall be subject to certain modifications and exceptions. Since the position will be that as soon as an Act is passed by a Legislature it will apply in all Scheduled Areas, certain rights and obligations will be created or modified by virtue of the Act. The accrual of such rights and obligations in the interim period might give rise to an awkward situation if it is decided subsequently (and a direction is made to that effect) either that the Act shall not apply to Scheduled Areas or that it shall apply to such areas subject to certain specified exceptions and modifications. It is of course possible to give retrospective effect to the direc-tions made under para 5 (1) in order

to secure that the exceptions and modifications subject to which the Act is applied to Scheduled Areas will have effect therein from the date of the passing of the Act. If that is done, consequential provisions will have to be inserted by way of 'modifications' in order to regularize anything done under the Act during the interim period. Even so, however, it is likely that the rights of several parties might be seriously affected and there might be much confusion. The Provincial Government, however, see no easy solution of such difficulties if the plan envisaged in para 5(1) of Part II of the Fifth Schedule is adhered to.

Note : The provisions of sub-paragraph (1) of paragraph 5 of the Fifth Schedule are based on the recommendation of the Sub-Com-mittee on Excluded and Partially Excluded Areas (Other than Assam) as adopted by the Advisory Committee. Attention is in-vited in this connection to paragraphs 10 and 11 of Volume I (Report of the Excluded and Partially Excluded Areas (Other than Assam) Sub-Committee). It will appear from the said report that the present system under which the Governor in his discretion applies the legislation did not appeal to the committee as this principle would be regarded as undemocratic even though the Governor in future might be an elected functionary. The criticism offered by the Government of Orissa to the provision set out in sub-paragraph (1) of paragraph 5 will also apply if the present provisions of the Government of India Act, 1935, under which no Act of the Central or a Provincial Legislature applies to an ex-cluded or a partially excluded area unless the Governor by a public notification so directs, is adopted; for, if in such case it is essential that an Act of the Central or a Provincial legislature should apply to any such area along with other areas on the date when it becomes law after it has been assented to, there is bound to be some time lag between the passing of the Act and the decision of the Governor that the Act shall apply to such or that in its application to such area it shall be subject to certain modifications and exceptions as in the present case. A decision will have to be arrived at in either case as to the application or non-application of the Act when the Bill is passing through the Legislature and a notification will have to be kept ready for issue on the date the Bill on being assented to becomes law.

Decision of the Drafting Committee, October, 19i48 : The Drafting Committee decided to recast the proviso to sub-paragraph (1) of paragraph 5 of Part II of the Fifth Schedule as follows : Provided that where such Act relates to any of the following subjects, that is to say :

(a) marriage, inheritance or property for social customs of the Scheduled Tribes :

(b) and (c) (Omit);

(d) land, other than lands which are reserved forests under the Indian Forest Act, 1927, or under any other law for the time being in force in the area in question, including rights for tenants, allotment of land and reservation of land for any purpose;

(e) any matter relating to village administration including the establishment of village panchayats.

the Governor shall issue such direction when so advised by the Tribes Advisory Council, The Government of Orissa has also made the following comments with regard to sub-paragraph (2) of Paragraph 5 of Part II of the Fifth Schedule :

> With reference to the Governor's power to make regulations under paragraph 5(2) of Part II of the Fifth Schedule, the question has been raised whether the power is as plenary as the power at present conferred by section 92(2) of the Government of India Act, 1935. A regulation made under Section 92(2) may deal with any subject irrespective of whether it is included in the Central, Provincial or Concur-rent List; it may even amend a Central Act. Since, however sub-paragraph (4) of paragraph 5 of Part 11 of the Fifth Schedule does not specifically refer to the Dominion Parlia-ment, the Provincial Government are doubtful if the power to make regulations conferred by sub-paragraph (2) of para-graph 5 will be equally plenary or will be restricted to matters on which the State Legislature will be competent to legislate. Although the term "appropriate legislature" used in sub-para-graph (4) of paragraph 5 would etymologically include the "Dominion Parliament" as well as "the State Legislature, it appears from a perusal of the Draft Constitution that the draftsman made a distinction between "Parliament" on the one hand and "State Legislature" on the other. It may, there-fore, be the intention of the Draft Constitution that the Governor's power to make regulations under sub-paragraph (2) of paragraph 5 will not extend to matters included in the Central List. If that is the Plan, the Provincial Government beg to differ from it, as they feel that the Provincial Governor's power to make regulations for the good govern- ment of Scheduled Areas should continue to be as plenary as it is at present.
>
> Note : The power to make regulations conferred by sub- paragraph (2) of paragraph 5 is not restricted only to matters on which the State Legislature will be competent to legislate. The expression "with respect to any matter not provided for by any law for the time being in force in such area" in sub-paragraph (2) of paragraph 5 and the use of the expression "appropriate legislature" in sub-paragraph (4) of that paragraph make it clear that the power to make regulations under sub-paragraph (2) of that paragraph is not restricted only to matters with respect to which the Legislature of the State is competent to legislate. Any further clarification is hardly necessary. However, to make intention clearer the following amendment may be made in paragraph 5 of Part II of the Fifth Schedule : In sub-paragraph (2) of paragraph 5 of the Fifth Schedule, the following be added at the end :
>
> and any regulations so made may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to such area.
>
> Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to substitute the following for sub- paragraph (2) of paragraph 5 of Part II of the Fifth Schedule :

r (2) The Governor may, after consultation with the Tribes Advisory council for the State, make regulations for any Scheduled Area in the State with respect to any matter not provided for by any law for the time being in force in such area, and any regulations so made may repeal or amend any Act of parliament or of the Legislature of the State or any existing law which is for the time being applicable to such area :

Provided that any regulations so made with respect to any matter enumerated in the Union List shall be submitted forthwith to the President and, until assented to by him, shall have no effect."

PARAGRAPH 6 K. Santhanam : That in paragraph 6(1) of Part II of the Fifth Schedule, the following be added at the end :

except in accordance with rules made in that behalf by the Governor in consultation with the Tribes Advisory Council;

Note : sub-paragraph (1) of paragraph 6 of the Fifth Schedule follows the recommendation of the Excluded Areas Sub- Commit-tee as adopted by the Advisory Committee. But, prima facie, there should be no objection to the amendment : of the wording of sub-paragraph (2), L.N. Sahu : That a suitable proviso be added to paragraph 6(1) of the Fifth Schedule to permit the making of regulations by the Provincial Government in order to prohibit the transfer of lands by members of a particular Scheduled Tribe to members of any other Scheduled Tribe.

Note : Paragraph 6 of Part II of the Fifth Schedule follows the recommendation or of the Sub-committee on Excluded Area as adopted by the Advisory Committee, This amendment involves a question of policy. If it is accepted, then it should be redrafted as follows :

After sub-paragraph (3) of paragraph 5 of the Part II of the Fifth Schedule, the following sub-paragraph be inserted :

(3-a) The Governor may also make regulations so as to prohibit the transfer of any land in a Scheduled Area in the State by a member of any Scheduled Tribe to a member of any other Scheduled Tribe.

Decision of the Drafting Committee, October 1948 : The Drafting Committee decided to recast sub-paragraph (1) of paragraph 6 of Part II of the Fifth Schedule as follows :

(1) It shall not be lawful for a member of the Scheduled Tribes to transfer any person who is not a member of the Scheduled Tribes except in accordance with rules made in that behalf by the Governor in consultation with the Tribes Advisory Council.

PARAGRAPH 12 K. Santhanam : That in paragraph 12(2) of Part III of the Fifth Schedule, after the words "so as to prohibit" the words "or regulate" be inserted.

Note : Sub-paragraph (2) of paragraph 12 follows the recommen-dation of the Excluded Areas Sub-Committee as adopted by the Advisory Committee, This amendment may, however, be accepted.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to recast sub-paragraph (2) of paragraph 12 of part III of the Fifth Schedule as follows :

> (2) The Governor may also make regulations so as to control or prohibit the transfer of any land in a Scheduled Area in the State by a member of the Scheduled Tribes to any person who is not a member of the Scheduled Tribes.

PARAGRAPH 17"

> K. Santhanam : That in paragraph 17(2) of Part IV of the Fifth Schedule after the words "so as to prohibit" the words "or regulate" be inserted.
>
> Note : The remarks on the amendment to paragraph 12 above would also apply to this amendment. This amendment may be accepted.
>
> Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to recast sub-paragraph (2) of paragraph 17 of Part IV of the Fifth Schedule as follows .
>
> (2) The Governor may also make regulations so as to control or prohibit the transfer of any land in a Scheduled Area in the State by a member of the Scheduled Tribes to any person who is not a member of the Scheduled Tribes."

22. When the Constituent Assembly took up the Fifth Schedule for consideration on 5th September, 1949, Dr. B.R. Ambedkar moved another Draft Fifth Schedule in place of the original Fifth Schedule. This Schedule was simpler in form and uniformly applied to all the Scheduled Areas. Para 5 of new Draft is quoted below :

> "5. Law Applicable to scheduled areas - (l) Notwithstanding any-thing contained in this Constitution the Governor or Ruler, as the case may be, may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a scheduled area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notifica-tion.
>
> (2) The Governor or Ruler, as the case may be, may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled

Area.

In particular and without prejudice to the generality of the foregoing power, such regulations may -

(a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in any such area;

(b) regulate the allotment of land to members of the Scheduled Tribes in such areas;

(c) regulate the carrying on of business as money- lender by persons who lend money to members of the Scheduled Tribes in such areas.

(3) In making any regulation as is referred to in sub-paragraph (2) of this paragraph, the Governor or Ruler may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.

(4) All regulations made under this paragraph shall be sub-mitted to the President and until assented to by him shall have no effect.

(5) No regulation shall be made under this paragraph unless the Governor or the Ruler making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council."

23. Before the Fifth Schedule was finally adopted by the Constituent Assembly, there was debate in the Assembly on every Clause of the Schedule. It will be useful, at this stage, to reproduce some passages from the Constituent Assembly Debate as under :

> "(Shri Yudhisthir Mishra) The special purpose for moving this amendment is that there are areas in Orissa and the C.P. States which may not be specified as scheduled areas but there are certain Scheduled Tribes among which certain kinds of land laws are prevalent. For example, in C.P. and Orissa States, it is not permissible on the part of a non-aboriginal to acquire the lands of an aboriginal without the sanction of the Government. Now, Sir, in that case, supposing according to paragraph 5, the Governor or the Ruler of a State does not make any regulation and retains the same provisions applicable to non-aboriginals with respect to the transfer of lands; then I shall submit that there will be no use in saying that the Government is prepared to safeguard the interests of the tribal people."

24. Shri Brajeshwar Prasad suggested as under :

> ".....The provinces being weak in economic resources arc not in a position to shoulder the responsibility. Hence I plead that the Centre should take command of the tribal areas. The Government of India has no right to exist if it cannot undertake to guarantee means of livelihood and free educational and medical facilities even for

such a small number of people....

I want, Sir, that no land in the scheduled areas belonging to an Adibasi should be allowed to be sold or mortgaged even to tribals without the permission of the Deputy Commissioner. Such a provision exists in Santhal Pargana. 1 am not at all in favour of dispossessing those non-tribals who have got lands or property in the scheduled areas, but no further lands should be given to non-tribals. This protection is needed in the interests of the tribals. It is also in consonance with the demands of the tribal leaders. This concession will generate a feeling of loyalty in the hearts of the tribal people....."

25. Shri Jadubans Sahay forcefully argued :

".....So far as land is concerned, it is not our intention, nor of the provincial Governments where the tribals have provincial Govern-ments have made laws to see that land should not pass out of the hands of the tribal people; in our province, the Chota Nagpur Tenancy Act was modified and altered long long before 1937 in order to see that no land should pass out of the hands of the tribal people. But, there were various difficulties in the original schedule that land should not be settled by the Government to any one except the tribal people. In the Scheduled areas, there are not only the tribal people; there are Harijans also; there are other castes also who are equally backward, if not otherwise, at least economically, at the tribal people. Is it, then, Sir, our wish that in those areas where the Harijans and other backward people remain, land should not be settled by the Government to them also? Of course, the tribal people should have the preference as well as the Harijans living in those areas. If these things are made elastic, we should have nothing to say on this point. But, the Government should see and in the future we also should see that preference is given to the tribal people and if they have no land, the landless tribal people should have the first priority....."

26. The above portions have been extracted from the Constituent Assembly Debates to indicate the mood of the representatives of the people and the urgency they felt in protecting the land of the tribals and need for prohibiting transfer of land in the Scheduled Areas to non-tribals by the State Government.

27. Para 5(2) of the Fifth Schedule, as finally adopted and engrafted in the Constitution, provided as under :

"5(2). The Governor or Rajpramukh, as the case may be, may make regulations for the peace and good government of any area in a state which is for the time being a Scheduled Area.

In particular and without prejudice to the generality of the forego-ing power, such regulations may -

(a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;

(b) regulate the allotment of land to members of the scheduled tribes in such area;

(c) regulate the carrying on of business as money- lender by persons who lend money to members of the scheduled tribes in such areas.

(3) In making any such regulation as is referred to in sub-paragraph (2) of this paragraph, the Governor or Ruler may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.

(4) All regulations made under this paragraph shall be submitted forthwith to the President and until assented to by him shall have no effect.

(5) No regulation shall be made under this paragraph unless the Governor or the Ruler making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council."

28. The word "Rajpramukh" was subsequently deleted by the Con-stitution (Seventh Amendment) Act, 1956.

29. The above legislative history indicates that from the very begin-ning, at least from the 19th Century, Scheduled Areas inhabited by aboriginals and tribals have been administered exclusively under the con-trol of the Central Government through the Governor of the State by providing special statutory measures. It is obvious that from the earliest time till the making of the Constitution, it was all along felt that the transfer of land in the Scheduled Areas by a tribal to a person who was not a member of the scheduled Tribe be totally prohibited and if such a transfer was made, it was to be treated as null and void. Government land in the Scheduled Areas could also not be allotted to persons who were not the members of the Scheduled Tribes. If such land was proposed to be allotted to them, it could be done only under the regulations made by the Governor. The basic concept was that the land of the Scheduled Tribes should be protected and should not be frittered away by transfer nor should any non-tribal be allowed to infiltrate in the Scheduled Area by getting an allotment of land made in his favour. In case of a transfer of land which was void, the power to restore land to a tribal or his heirs after evicting the non-tribal was also vested in the Government.

30. It has already been seen above that in the Draft Constitution, prepared by the Drafting Committee, there was a clear prohibition on the allotment of Government land to non-tribals except in accordance with the rules made by the Governor.

31. In the Constituent Assembly when the Draft Fifth Schedule was considered, no Member raised any objection that the Government should be free to allot its land to the non-tribals in the Scheduled Areas as all the Members were conscious of the fact that the special privileges and special status

enjoyed by the tribals should not be disturbed by allowing non- tribals to enter into that Area.

32. The protective measures adopted through Legislation for the preservation of tribal life, for the prevention of exploitation of tribals by non-tribals and money-lenders and to seal infiltration of non-tribals in the Agency tracts or Scheduled Areas rested on three main planks :

(a) Prohibition of transfer of land by tribal to a non-tribal with the stipulation that such transfer will be null and void.

(b) Prohibiting Government from allotting land vested in it to non-tribal.

(c) Power of Government to evict non-tribal from the tribal's land coming into his possession through a void sale-deed and restoring the same to the tribal or his heirs.

33. The question is whether this position is still reflected in the Fifth Schedule read with Articles 15(4), 46 and 244 of the Constitution.

34. The Fifth Schedule as finally brought on the pages of the Con- stitution does not contain any specific prohibition.

35. After specifying that the executive power of the State extends to the Scheduled Areas therein and that the Governor shall report annually to the President regarding the administration of those areas and that the executive power of the Union extends to the giving of direction to the States about the administration of the Scheduled Areas and further that there shall be a Tribes Advisory Council to advise on such matters pertain- ing to the welfare and advancement of the Scheduled Tribes as may be referred to them by the Governor, the Fifth Schedule, in Para 5 thereof, proceeds to speak about the applicability of laws to the Scheduled Areas by saying that the Governor may, by Notification, direct that an Act of Parliament or Legislature of the State shall not apply to the Scheduled Area or that it shall apply with such exceptions and modifications as may be specified in the Notification, These directions may also be issued with retrospective effect.

36. Under Para 5(2) of the Fifth Schedule, the Governor has also been given the power to make Regulations for the "Peace and Good Government" of the Scheduled Area.

37. Apart from this power which is in very vide and General terms, Regulations could also be made by the Governor to :

(a) prohibit or restrict the transfer of land by or among member of the Scheduled Tribes in such area;

(b) regulate the allotment of land to members of the Scheduled Tribes in such area;

(c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.

38. The power to make Regulations also includes the power to repel or amend any Act of Parliament or of the State Legislature or any existing law which may, for the time being, be applicable to the Scheduled Area.

39. The power to make Regulations is undoubtedly legislative in character. The power to issue directions under Para 5(1) of the Fifth Schedule as to the applicability of an Act of Parliament or State Legislature with such exceptions and modifications as the Governor may direct, is also legislative in character. In Chatturam & Ors, v. Commissioner of Income Tax, Bihar, (1947) FCR 116 = (1947) FLJ 92, it was laid down with reference to Section 92(1) of the Government of India Act, 1935 that when the Governor issues a Notification under Section 92(1) by which Federal Laws are applied to Excluded and Partially Excluded areas (Scheduled Areas), he exercised a legislative power. So also when the Governor makes Regulations in exercise or power under Para 5(2) of the Fifth Schedule, which is equivalent to Section 92 of the Government of India Act, 1935 and repeals or amends any Act of parliament or State Legislature, he exercises legislative power as the principle laid down in Chhaturam's case (supra) which was followed in Jatindra Nath Gupta \. The Province of Bihar & Ors., (1949) FLJ 225, would be applicable to this situation also.

40. The Governor has also been given the legislative power to make Regulations for the "PEACE AND GOOD GOVERNMENT of any area in a State which is a Scheduled Area. The words "PEACE AND GOOD GOVERNMENT are the words of very wide import and give wide dis-cretion to the Governor to make laws for such purpose. In King Emperor v. Benoari Lal Sharma, (1944) L.R. 72 I A. 57 and in Attorney-General for Saskatchewan v. Canadian Pacific RY. Co., (1953) A.C, 594, it was held that the words "PEACE, ORDER AND GOOD GOVERNMENT" are the words of very wide import giving wide power to the authority to pass laws for such purposes. In Raja Jogendra Narayan Deb v. Debendra Narayan Roy & Ors., (1942) L.R. 69 I.A. 76, it was explained that these words, namely, "PEACE, ORDER AND GOOD GOVERNMENT have reference to the scope and not to the merits of the legislation. It wa s again explained in Girindra Nath Banerjee v. Birendra Nath Pal, (1927) I.L.R. 54 Cal. 727 that these words are words of the widest significance and it is not open to the Court to consider whether any legislation made by the Governor would conduce to peace and good Government.

41. The words "PEACE, PROGRESS AND GOOD GOVERN-MENT have also been used in Article 240 of the Constitution which empowers the President to make Regulations for certain Union Territories. This Court had an occasion to consider the significance of these words in T.M. Kanniyan v. Income-Tax Officer, Pondicherry and Anr., [1968] 2 SCR 103 and relying upon the above decisions as also those rendered in Riel .v The Queen, (1885) 10 A.C. 675 and Chenard and Co. & Ors. v. Joachim Arissol, (1949) A.C. 127, it was held that the power of the President to make Regulations under Article 240 was very wide and the President could make Regulations with respect to a Union Territory occupying the same field on which Parliament could also make laws.

42. In exercise of the power conferred by Para 5(2) of the Fifth Schedule, the Governor of Andhra Pradesh promulgated Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959.

43. These Regulations were amended by Regulation I of 1970, again by Regulation I of 1971 and by Regulation I of 1978.

44. The constitutional validity of these Regulations was challenged in P. Rami Reddy & Ors. v. State of Andhra Pradesh & Anr., [1988] 3 SCC 433 and upheld by this Court.

45. Para 3(l)(a) of the Regulation which opens with a non- obstante clause provides that a transfer of immovable property situate in the Agency Tracts by a person, whether or not such a person is a member of the Scheduled Tribe, shall be absolutely null and void. This puts a complete ban on the transfer of immovable properties in the Agency Tracts by any person whatsoever, whether he is a member of the Scheduled Tribe or not. There is, however, one exception to this rule as it is provided that such transfer shall not be null and void if the transfer is made in favour of a person who is a member of the Scheduled Tribe or is a Society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964, which is composed solely of members of the Scheduled Tribes.

46. Para 3(l)(c) provides that if a person "who intends to sell his land, is not able to sell that land either because the member belonging to the Scheduled Tribe is not willing to purchase the land or is not willing to purchase the land on the terms offered to him, such person may apply to the Agent or the Agency Divisional Officer or any other Prescribed Officer (who are defined in Para 2(b) and (c) of the Regulations) for the acquisi-tion of such land by the State Government. The Agent or the Agency Divisional Officer or the Prescribed Officer, as the case may be, shall then take over the land on payment of compensation in accordance with the principles specified in Section 10 of the Andhra Pradesh (Ceiling on Agricultural Holdings) Act, 1961. The land shall then vest, free from all encumberances, in the State Government which shall dispose of the land in the favour of member of the Scheduled Tribe or a Co-operative Society composed solely of the members of the Scheduled Tribe or "in such other manner and subject to such conditions as may be prescribed." There cannot also be a "Benami" transaction under the Regulations and a member of the Scheduled Tribe cannot hold property in his name for the benefit of a non-tribal.

47. Para 3(2) (a) provides that if a transfer of immovable property has been made in contravention of Para 3(l)(a), the Agent, the Agency Divisional Officer or any other Prescribed Officer suo motu or on the application of anyone interested or on the information of a public servant, decree ejectment of the person in possession of that property claiming under such transfer. The property shall then be restored to the transferor or his heirs.

48. Para 3(2)(b) provides that if a transferor or his heirs are not willing to take back the property or their whereabouts are not known, the property shall be assigned or sold to any other member of the Scheduled Tribe or a Co-operative Society composed solely of the members of the Scheduled Tribe. The Agent or the Agency Divisional Officer or the Prescribed Officer shall have a power to "otherwise" dispose it of as if it was the property at the disposal of the State Government.

49. It may be mentioned here that Para 3(1) (b) contains a rule of presumption that if any immovable property situated in the Agency Tracts is in possession of a person who is not a member

of the Scheduled Tribe, it shall be presumed, until the contrary is proved, that the property has been acquired by that person through a transfer made to him by member of the Scheduled Tribe.

50. Para 3A of the Regulation places two restrictions on a person intending to mortgage his property. The first restriction is that it can be mortgaged only in favour of a person who is a member of the Scheduled Tribe or to a Co-operative Society or a Land Mortgage Bank or any other bank or financial institution approved by the State Government. The Explanation appended to Para 3A(1) defines a "Bank". The other restric-tion is that while mortgaging the property, it would not be open to that person to deliver possession to the mortgagee. Clause 2 of Para 3A provide that in case the immovable property which was mortgaged is brought to sale on account of default in payment of the mortgage money or the interest payable thereon, the said property shall be sold only to a member of the Scheduled Tribe or to a Co-operative Society composed solely of members of the Scheduled Tribe. Explanation appended to this Clause specifies as to what would be treated as Co-operative Societies. It provides that if the Government is a member of any Co-operative Society, it, namely, the said Society, shall also be deemed to be a Society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964.

51. Clause 5 provides that no immovable property situate in the Agency Tracts and owned by a member of the Scheduled Tribes shall be liable to be attached and Sold in the execution of money decree.

52. Clause 6 creates certain offences and prescribes the penalties therefor. For example, if a person acquires any immovable property in contravention of any provision of the Regulations or continues in possession of such property after a decree for ejectment is passed, he will be prosecuted and sentenced to imprisonment for a term which may extend to one year.

53. These Regulations indicated a departure from the normal laws relating to immovable property. Normally, an owner of the immovable property is free to transfer his property to anyone he likes. But if he possesses property in the Agency Tracts or the Scheduled Area, his right to transfer the property is restricted as he can transfer it only to a member of the Scheduled Tribe or to a Co-operative Society comprising solely of the members of the Scheduled Tribes. So also, under the usufructuary mortgage, possession has necessarily to be transferred to the mortgagee but these Regulations prescribe that in no case shall possession be delivered to the mortgagee.

54. It will be seen from the above that at least in two circumstances, the property of the member of the Scheduled Tribe or any other person in the Scheduled Area becomes the property of the State Government:

> (1) If a person is not able to sell his property either because a member of the Scheduled Tribe is not willing to purchase the property or is not willing to purchase the property on the terms at which it proposed to be sold, then the Agent, or the Agency Divisional Officer or any Prescribed Officer can, by order, acquire the property on payment of compensation. The property loses its original character and becomes the property of the State Government.

(2) If on a decree for ejectment being passed against a person in occupation of the property belonging to a Scheduled Tribe under sale deed which is void, the property is sought to be restored to the transferor or his heirs but they are not willing to take the property or their whereabouts are not known, it would be open to the Government to assign or transfer the property to any other member of the Scheduled Tribe or otherwise dispose it of as if it was the property, at the disposal of the State Government.

55. In all these circumstances, when the property either comes to vest in the State Government or becomes a property at the disposal of the State Government, the Government cannot, in view of the above, transfer the property to a "person" of its own choice but has to transfer, assign or sell to a member of the Scheduled Tribe or a Co-operative Society of the Scheduled Tribes.

56. The possibility of the Government disposing it of to a person who is not a member of the Scheduled Tribe is totally ruled out by the Regula- tions by providing that it shall be sold, assigned or transferred only to tribals or their Co-operative Society. If this applies to properties which become the Government properties, how the properties which are already the Government properties could be excluded from the applicability of these Regulations? The Government has to be bound down to the Con-stitutional scheme sought to be enforced through Regulations made by the Governor under Para 5(2) of the Fifth Schedule and cannot be permitted to transfer its own properties in favour of non-tribals so as to allow their infiltration into the Scheduled Area. The prohibition contained in Para 3(1) (a) that no parson, whether he is a member of the Scheduled Tribe or not, shall transfer his immovable property to a non-tribal must, therefore, in its scope cover the Government, as well, which, if it possesses land in the Agency Tracts, cannot transfer it either by sale, allotment, lease or otherwise to a non-tribal. To this limited extent, it has to be treated as a "person" within the meaning of Clause 3(l)(a) of the Regulations.

57. It is contended by the learned council for the respondent that where the property is acquired by the Government on payment of compen-sation or it becomes the property at the disposal of the Government, such property, undoubtedly, has to be disposed of in favour of the member of the Scheduled Tribe or a Co-operative Society of the Scheduled Tribes but the Government also retains the power and choice to dispose it of in such other manner and subject to such conditions as may be prescribed. It is contended on the basis of the words "or in such other manner and subject to such conditions as may be prescribed" occurring in Para 3(1) (c) that the Government is not bound to sell the property to a member of the Scheduled Tribe or the Co- operative Society of the Scheduled Tribes. It is contended that almost similar words have been used in Para 3(2)(b) where the property, if it is not taken back by the transferor who is a member of the Scheduled Tribe or his heirs, becomes the property at the disposal of the State Government and the State Government has the choice either to assign or sell the property to any member of the Scheduled Tribe or a Co-operative Society of the Schedule Tribes or "otherwise dispose it of as if it was a property at the disposal of the Government". This interpretation cannot be accepted. The words "or in such other manner and subject to such conditions as may be prescribed" occurring in Para 3(l)(c) and the words "or otherwise dispose it of as if it was a property at the disposal of the state Government" have to be read, not in isolation, but in the context of other words used in those provisions. The emphasis throughout in these

Regulations has been that the property would be sold or transferred only to a member of the Scheduled Tribe or their Co-operative Societies. The Constitutional scheme which is sought to be enforced through Regulations is that the property of the Scheduled Tribe or the immovable property situated in Agency Tracts may be protected and be not frittered away and further that they may retain their original character and may continue to belong to members of the Scheduled Tribe or their Co-operative Societies, or that if the property belongs to a non-tribal, it may not be transferred to a non-tribal and may be transferred to a tribal alone. The words "or in any other manner" in Para 3(l)(c) or the words "otherwise dispose it of as if it was a property at the disposal of the State Government" occurring in Para 3(2)(b) have to be read in that context with the result that even if the Government intended to deal with such immovable properties "in any other manner" it could deal only in a manner which would ultimately benefit a member of the Scheduled Tribe or their Co-operative Societies. The Fifth Schedule including Para 5 thereof as also the Regulations made thereunder by the Governor of Andhra Pradesh clearly seek to implement the national policy that the custom, culture, life-style and properties of the Scheduled Tribes in the Agency Tracts and other immovable properties situate therein shall be protected. The Government being under a legal constraint to deal with the property situated in the Agency Tracts only in the manner indi-cated above, cannot itself act beyond the scope of the Regulations by saying that it is free to dispose of its own properties in any manner it likes. If the Government was allowed to transfer or dispose of its own land in favour of non-tribals, it would completely destroy the legal and constitutional fabric made to protect the Scheduled Tribes. The prohibition, so to say, disqualifies non-tribals as a class from acquiring or getting property on transfer. On account of this disqualification, the Government cannot, even if it is not a "person" within the meaning of Para 3(1)(a), transfer, let out or allot its land or other immovable property to a non- tribal.

58. These Regulations have been made to give effect to the power of the Governor under Clauses (a) and (b) of Para 5(2) of the Fifth Schedule for "Peace and Good Government" in the Agency Tracts. These Regula-tions also aim at ushering in an era of social equality where the most backward and isolated people who constitute the Schedule Tribes may be rehabilitated effectively in the nation's main-stream. The prohibition to sell the land to non-tribals and the further requirement that if the property comes to be vested in the Government or it becomes property at the disposal of the Government, it will be sold, assigned or distributed only to the tribals also is a measure, nay, a strong measure, in that direction to give effect to the philosophy of "Distributive Justice".

59. The Mines and Minerals (Regulation and Development) Act, 1957 has already been amended by insertion of Section 11(5) at the State level which provides that the Government land shall not be allotted for the purpose of mining to non-tribals. A lot of argument was raised on both sides whether this Amendment was retrospective or prospective. While it is contended on behalf of the respondents that the leases which had already been executed or renewed prior to the Amendment or introduction of Section 11(5), would not be affected the appellants in CA, arising out of SLP(C) Nos. 17080-81 of 1995 argued that such leases, including renewed leases cannot be operated.

60. We have already held that the present scheme, set out in the Fifth Schedule and Regulations made by the Governor in exercise of the power under Para 5(2) of the Schedule, is to sell, distribute, assign or let out the Government land only to members of Scheduled Tribes. Section 11(5)

introduced in the Act only seeks to give effect to what was already contained in the Fifth Schedule and the Regulations made thereunder. In order to set at rest the above controversy raised at various levels that the Government land could also be allotted to non-trlbals, the Amendment was brought about in the Mines and minerals (Regulation and Development) Act, 1957 so as to make it sure that it was never the intention that the Government land could be allotted to non-tribals. The Amendment only retrates the existing position.

61. I am short of time as Brother Ramaswamy is retiring tomorrow. It is not possible for me to write out in detail on other points involved in the case. Since I am agreeing with Brother Ramaswamy on the findings recorded by him on other issues involved in the case, specially those relating to forests and Conservation of Forests Act and the environmental questions, I conclude by saying that I am in respectful agreement with him. I also agree with the ultimate directions issued in the Judgment.

62. In view of the above, I am also of the opinion that the appeals of Samatha arising out of SLP(C) Nos. 17080-81 of 1995 deserve to be allowed and are hereby allowed while the other appeal arising out of SLP(C) No.21457 of 1993 is dismissed.

CA. No. 4601-4602/97. PATTANAIK, J. Leave granted.

These two appeals by special leave are directed against the judg-ment of the Andhra Pradesh High Court dated 28.4.95 dismissing the two Writ Petitions filed by the present appellant which were registered as Writ Petition Nos. 9513 of 1993 and 7725 of 1994, by a common judgment. The appellant, a Rural Development Society of Peda Mallapuram, Sankhavaram Mandap in the State of Andhra Pradesh filed the two Writ Petitions as Public Interest Litigation seeking issuance of writ of mandamus to terminate the mining leases in Borra Gram Panchayat area of Anantagiri Mandal which had been granted and/or renewed in favour of the private respondents inter alia on the grounds that the said leases contravened the provisions of Andhra Pradesh Scheduled Area Land Transfer Regulation of 1959, as amended in 1970 (hereinafter referred to as the 'Regulation'), the leases violate the provisions of the Forest Conservation Act, 1980 (hereinafter referred to as the 'Conservation Act'), and such leases are prohibited under Section 11(5) of the Mines and Minerals (Regulation and Development) Act 1957 as amended by Act of 1991 (hereinafter referred to as The MMRD Act'). The appellant, who was the petitioner before the High Court advanced the contention that under the Regulation transfer of all lands in the schedule area to a non-tribal is prohibited and the said prohibition equally applied to the government land and as such the mining leases in favour of the private respondents who are non-tribals are void. In elaborating this contention it was contended that the word 'person' in Section 3(1) of the Regulation as amended in 1970 would include the Government. Further contention of the appellant was that in view of Section 2 of the Conservation Act no forest land could be utilised for non forest purpose without the consent of the Central Government and the lease holds favour of the private respondents being the forest land and there being no consent of the Central Government the leases are invalid. Lastly it was contended that in view of Section 11(5) of the MMRD Act the leases in favour of the private respondent who are non tribals must be declared to be void.

The Director of Mines and Geology, Government of Andhra Pradesh who was respondent No. 2 before the High Court filed a counter-affidavit taking the stand that the leases in question in favour of the private respon-dents were prior to the Conservation Act coming into force and, therefore, the question of taking previous consent of the Central Government did not arise. On the question of alleged violation of the provisions of the Regula-tion it was stated that the prohibitions and restrictions in the Regulation are not intended to apply to the Government land and there was no bar under the Regulation for the Government to grant mining leases in favour of the non-tribals. On the question of applicability of Section 11(5) of the MMRD Act it was contended that the said provision is prospective in nature and no mining lease has been granted after enforcement of Section 11(5) of the MMRD Act in favour of any non-tribal. Respondent No. 4, the Forest Officer filed the Counter affidavit stating that the Borra forest black was notified as reserve forest and some of the respondents have encroached into the reserved forest area and to that extent their operations are illegal. The private respondent No. 13 before the High Court also filed a counter-affidavit adopting the stand taken by respondent No. 2. The said respondent No. 13 was a transferee from the original lessee. The other lessee-respondents also filed affidavits adopting the stand taken by respon-dent No. 13.

The High Court by the impugned judgment came to the conclusion that the word 'person' in Section 3(1) of the Regulation does not include the Government and as such the government is not prohibited from transferring the government land in favour of non-tribals within the scheduled area. According to the High Court this conclusion is irresistible from the fact that in order to prohibit grant of mining lease in favour of the non- tribals within the scheduled area Section 11(5) of the MMRD Act was introduced in the year 1991. But the said provisions is prospective in nature and would not apply to the existing leases. So far as the contention of applicability of the Conservation Act the High Court came to the conclusion that the said Act applies to the reserved forest and since it is not established as to the extent of the land covered by the mining leases which form a part of the reserved forest and since the joint survey conducted indicate that there is no lessee who is occupying the reserved forest area, except in one case where to an extent of two thousand metres of the mining lease forms a part of the reserved forest, the validity on account of the non-compliance of the Conservation Act cannot be gone into. The High Court in the impugned judgment has also come to the conclusion that prior approval of the Central Government under Section 2 of the Forest Conservation Act is not required where the land in question has already broken in pursuance of a lease and in support of this conclusion reliance has been placed on the decision of this Court in State of Bihar v. Banshi Ram, [1985] 3 SCC 643. The aforesaid view in Banshi Modi's case appears to have not been approved by the Court in the later cases -.Ambika Quarry Works v. State Of Gujarat, [1987] 1 SCC 213. Further in view of the decisions of this Court in S. Nageswaramma's case, Supreme Court Monitoring Committee's case and Godavarman's case, the High Court committed error in relying upon the ratio of Bakshi Ram Modi's case. The High Court, therefore, observed that the Writ Petitions may approach the Competent Authority in that regard seeking necessary relief and on such petitions being filed the appropriate authority would pass appropriate order bearing in mind the provisions of Section 2 of the Conservation Act. With these conclusions the Writ Petitions having been dismissed the present appeals by special leave have been preferred. Though the contentions before the High Court were limited to the aforesaid extent as indicated but before this Court the horizon was expanded and Dr. Rajiv Dhawan, learned senior council appearing for the appellant

raised several contentions in assailing the validity of the continuance of the mining leases which according to the learned counsel are situated within the scheduled area. These two appeals initially had been heard by a Bench of two judges but later on in view of the question of law raised as well as in view of certain divergence of views, has been placed before a three Judge Bench and the matter had been re-argued.

It has been averred before this Court that the appellant Society was started in the year 1990 at the request of the local tribes of Peda Mal- lapuram area and the main objects of the society are implementation of various welfare schemes of the Government and creating awareness among tribal people of their rights and duties and protection of ecological balance and imparting of environmental education in the tribal area. The society operates in the Borra reserved forest area which was a part of the domain of Raja of Jaipur before independence. Within the forest area the tribal villagers occupy the land for cultivation and there are about 230 families settled in 14 villages occupying 436 acres within the enclosures which are threatened of eviction by the mining operators. It may be noticed that this assertion was not there in the Writ Petition filed before Andhra Pradesh High Court. The further assertion of facts in this Court is that within Anantgiri Mandal there are 230 families of tribals and they occupy roughly 800 acres and yet they are also threatened to be evicted by mining operators. The appellant further asserts that the Borra forest area is a scheduled area in Vishakhapatnam District of Andhra Pradesh and it lies in Anantgiri hills. The Borra caves are of unique occurrence and the entire area is rich in mineral wealth, particularly mica and calcite. It is averred that the mining activity in the said area has started since 1946 and the said mining operations are being carried on in the reserved forest area, notwithstanding the prohibitions contained in different laws as already stated, and the State of Andhra Pradesh bas not taken any initiative in stopping the mining activities which has resulted human hazards to the peaceful living of the tribal people and which affects the ecology and environment of the area and, therefore the same should be prohibited by issuance of mandamus. In the grounds taken before this Court in these Special Leave Petitions it has been urged that under the amended Section 3(1) of the Regulations transfer of immovable property situated in the schedule area to non-tribal is prohibited and the word 'person' used in Section 3(1) includes the government and as such the leases contravened Section 3(1) of the Regulation. The further ground taken is that under Section 2 of the Conservation Act without the prior approval of the Central Government the State Government could not have granted mining leases within the forest area as mining obviously is a non-forest purpose. The private respon-dent No. 12, who is the Managing Director of the Company, filed the counter-affidavit taking the positive stand that the mining leases held by them do not form part of the scheduled area and further the leases have been granted much prior to the amended provisions of the Regulation as well as much prior to the coming into force of the Conservation Act and, therefore, are not hit by any prohibitions and restrictions contained in those provisions. Respondent No. 19 has filed the counter-affidavit taking the stand that the lease has been granted in favour of Shri M. Laxmi Narainan on 17.11.1984 and certain other leases had been granted in Anantgiri Mandal to said Shri M, Laxmi Narainan on 24.1.1986. The transfer of mining leases from the original lessee was granted by the appropriate authority under the provisions of the MMRD Act and the Mineral Concession Rules framed thereunder and there has been no violation of any Act or Regulation in allowing such mining activities. It has also been stated that the mining activity does not encroach upon any forest area or reserved forest area and nowhere has the petitioner provided

any factual foundation for allegation to demonstrate that any part of the land held by respondent No. 19 is within any forest land. And in the absence of such factual metrix it is not possible to hold that there has been violation of Section 2 of the Conservation Act. It has also been averred by the respondent that the leases do not destroy the ecological balance and do not disturb the flora and fauna and the Government has granted the mining leases only after complying with the statutory requirements. On the ques-tion of interpretation of the provisions of the Regulation it has been stated that the word 'person' in Section 3(1) does not include the Government and therefore, the provisions of the Regulation have no application to the Government land. In paragraph 20 of the counter-affidavit it has been reiterated :

> "There is no averment by the petitioner that this respondent has been in possession of any forest area or the area earmarked for the reserve forest. Therefore the statutory ban in Section 2 of Forest (Conservation) Act is not applicable to the leases granted to this respondent company."

The said assertion has also been repeated in paragraph 25 of the Counter- affidavit. Several private respondents have also filed counter-af-fidavit in this Court more or less taking similar stand and it is therefore, not necessary to repeat the same. But it would be appropriate to notice the stand taken by the State of Andhra pradesh and its officials who have been arrayed as respondent Nos. 1 to 4. The State in its affidavit have indicated that the mining leases which are in dispute had been much prior to the coming into force of the Conservation Act of 1980 and, therefore, there has been no infraction of the aforesaid Act. On the question of applicability of the provisions of the Regulation it has been stated that the Government is not 'person' within the meaning of Section 3(1)(a) of the Regulation and the Government being the sole owner of the land has the right to transfer the same to any individual/company. With regard to the activities of the appellant-society it has been averred that the society is working for its selfish ends and is mis-guiding the tribals who are peacefully living and tribals are unnecessarily dragged into litigation. It has also been stated that the areas which are under occupation of the tribals have been surveyed and the said areas have been deleted from the mining leases and, therefore, the assertion that the tribals are being threatened by the mining operators from being dispossessed is not correct. It has also been averred that the mining activities are on the exposed mineral deposit and no extensive mining has been taken in the area damaging the forest. With regard to the benefits obtained by the State on account of such mining activities, it has been stated that not only it has provided employment opportunity to the local tribals but also encourages mineral based in-dustries in the district which provides good opportunity to the educated unemployed. The State in its affidavit has also averred that all the mining leases were granted in accordance with the prescribed law and there is no possibility of endangering the Borra caves by the alleged mining activities. The State has further stated that after coming into force of Section 11(5) of the MMRD Act no mining leases within the scheduled area has been granted in favour of any non-tribal in contravention of the aforesaid provisions of the MMRD Act. It has also been stated that every care has been taken by the Government to protect the interest of the tribals and to ensure that there is no blasting in the mining area to rehabilitate the affected people. The State in its affidavit has also indicated as to which mine continues to be operative and which is not operative as on the date of the affidavit.

Dr. Dhawan, the learned senior counsel appearing for the appellant contended that the history of the tribal areas traced from the administra- tion under the British rule to the inclusion of Schedule V in the Constitu- tion conferring a special power on the Governor to frame Regulation for peace and good government in the area would clearly indicate that there should not be any allotment of land to the non-tribals within the tribal area, be it the government land or land belonging to the tribals, which in turn would accord responsibility to the tribals for the economic development of the area. According to the learned senior counsel one of the purposes for which Schedule V was engrafted in the Constitution conferring power on the Governor and not on the respective legislatures of the States for the administration of the tribal area is to ensure distributive justice, especially of land and that purpose will be frustrated if government land within the tribal area is allocated in favour of non- tribals, whether it is for the purposes of mining or for any other purpose. It is, therefore, urged that this purpose should be borne in mind in interpreting Regulation framed by the Governor in exercise of power conferred upon him under Schedule V to the Constitution. The learned senior counsel urged that the term 'peace and good government' should be given a wide interpretation and the expression 'regulate the allotment of land to members of Schedule-Tribes in such area' in S chedule V(2)(b) should be construed to mean that the Governor should frame regulation ensuring that land does not pass out from tribals and the land allotments are made exclusively to tribals and the distribution of land amongst them inter se can be regulated. The learned senior counsel further urged that the provisions of the Constitution itself mandate an obligation on the Governor to frame regulation prohibiting transfer of land of all category within the schedule area in favour of a non-tribal. According to Dr. Dhawan, if the expression 'person' used in first part of Regulation 3(l)(a) is interpreted to include the State, thereby connoting that the government land also within the scheduled area cannot be transferred in favour of a non-tribal then the very purpose of conferring power on the Governor for administration of tribal area could be achieved and such an interpretation would not only prevent the exploitation of tribals from non-tribals but would also advance the interest of the tribals and would secure substantive distributive justice for the tribals. According to the learned senior counsel appearing for the appellant the regulations and statutes affecting the tribal regime must be given a purposive inter-pretation so that the raison d'etre of the regime is not defeated. So far as the Conservation Act is concerned, the counsel argued that in view of the embargo contained in Section 2 of the Conservation Act prior permission of Central Government not having been obtained the mining activities within the forest area cannot be permitted to be continued. In relation to the provisions of the Environment Protection Act, the learned senior counsel contended that the Central Government is under a statutory duty to protect the environment and co-ordinate the activities of the State Government under the Environment Protection Act of 1986 and such statutory obligation not having been discharged by the Central Government and the mining activities within the schedule are a being hazardous to human health this Court should compel the Union Government to perform its statutory obligation. So far as the prohibition under Section 11(5) of MMRD Act is concerned, it is contended by Dr. Dhawan, learned senior counsel appearing for the appellant that Section 11(5) in the MMRD Act is merely in the nature of clarification to the provisions of Section 3(l)(a) of the Regulation and in view of such provision the mining activities after coming into force of the aforesaid provision cannot be permitted to be continued. Let me now examine the contentions raised to find out, how many of them would be sustainable. Administration of Tribal areas under the British Rule and the debates in the Constituent Assembly in relation to Administration of Tribal Area, leading to engraftment of

Schedule V in the Constitution -

The Indian Statutory (Simon) Commission in its report in 1930 indicated that these tribal areas covered 1,20,000 square miles with a population of about eleven million. These areas are located mostly in Bihar, Orissa, Andhra Pradesh, Madhya Pradesh, Bengal and Assam. Even During the British rule, because of the social and economical conditions of these tribal people special laws were made applicable in those areas. In the book "THE FRAMING OF INDIA'S CONSTITUTION" - A study by B. Shiva Rao, it has been stated that there were two dangers to which subjection to normal laws would have specially exposed these tribal people, and both arose out of the fact that they were primitive, simple, unsophisticated and frequently improvident. There was also a risk of their agricultural land passing to the more civilised section of the population, and the occupation of the tribals was for the most part agricultural and secondly they were likely to get into the "wiles of the moneylender". It was thus the primary aim of the government policy then to protect these people from these two dangers and preserve their tribal customs and this was achieved by prescribing special procedures applicable to these backward areas. The Scheduled Districts Act, enacted in 1874 was the first measure adopted to deal with these areas and the said Act enabled the executive to extend any enactment in force in any part of the British India to a "Scheduled district" with such modifications as might be considered necessary. Thus, the execu-tive had the power to exclude these areas from the normal operation of ordinary law and give such protection as they might need. Even in Mon-tagu-Chelmsford Report of 1918 it was suggested that the political reforms contemplated for the rest of India could not apply to these backward areas where the people were primitive and thus these backward tracts were to be excluded from the jurisdiction of the reformed Provincial Governments and administered personally by the heads of the Provinces. In the Govern-ment of India Act 1919 these tracts were divided into two categories and some of the areas were wholly excluded from the scope of the reforms. Therefore, neither the Central nor the Provincial Legislature had the power to make laws applicable to these areas and the power of legislation was vested in the Governor acting with his Executive Council, the Ministers being excluded from having any share in the responsibility for the ad-ministration of these areas. Until the Simon Commission's report, the primary object and the policy of the government in relation to the tribal areas was to give the inhabitants of the tribal areas security of land tenure, freedom in the pursuit of their traditional means of livelihood, and a reasonable exercise of their ancestral customs. The Simon Commission, however, realised that isolation of these people from the main currents of progress would not be a satisfactory long term solution and, therefore, it would be necessary to educate these people to become self-reliant. As the Provincial Government was not inclined to devote special attention for the upliftment of these tribal people mostly because of the fact that backward tract was a deficit area and in view of the magnitude and complexity of problem the Commission had recommended that the responsibility for the backward classes would be adequately discharged only if it was entrusted to the Centre. But at the same time, it was also recognised that it would not be a practicable arrangement if centralisation of administrative authority in these areas led to a situation in which these areas would be separated from the Provinces of which they were an integral part. The Commission, therefore had suggested that the Central Government should use the Governors for administration of these areas and it could be laid down by rules how far the Governor would act in consultation with his Ministers in the discharge of these agency duties. This proposal, however, was not adopted in the constitutional reforms of 1935. Under the Govern-ment of India Act of 1935,

these backward areas were classified as excluded areas and partially excluded areas. The excluded areas in Assam, Madras, Bengal, North-West Frontier Province were placed under the personal rule of the Government acting in his discretion and while the partially excluded areas were within the field of ministerial responsibility and the Governors exercised a special responsibility in respect of the administration of these areas and they had the power in their individual judgment to overrule their Ministers if they thought it to do so. No Act of the Federal or Provincial Legislature would apply to any of these areas but Governors had the authority to apply such Acts with such modification as they considered necessary, as is apparent from Sections 91 and 92 of the Government of India Act 1935. The Cabinet Mission's statement of May 16, 1946 mentioned about the requirement of the special attention of the Constituent Assembly in respect of these tribal areas.

Vth Schedule of the Constitution as well as paragraph 5 of the said Schedule which confers power on the Governor to make Regulations for the peace and good government in any area in the State which is a schedule area nowhere indicates that there should be no alienation of any land in favour of a non-tribal within the said area. The aforesaid provision is an enabling provision conferring power on the Governor to frame Regulation for peace and good government and the Regulation in question may provide for prohibiting or restricting transfer of land by or among the members of the Scheduled Tribes, regulate the allotment of land to mem-bers of the Scheduled Tribes and regulate the carrying on business as money-lender by persons who lend money to the Scheduled Tribes. It has, therefore, become necessary to find out from the Debates in the Constituent Assembly as to whether the Constitution makers at all intended to prohibit alienation of any land in favour of a non-tribal within the tribal area. In course of arguments while placing the Debates in the Constituent Assembly Dr. Rajiv Dhawan, learned senior counsel at one point of time had advanced an extreme argument that all lands within the tribal area belong to the tribals and only during the British regime the tribals were dented of their rights over the lands and, therefore, this Court would be justified in holding that the lands within the entire tribal area belong only to them and the State has no authority or power in respect of the said land. In support of the said contention the learned senior counsel placed reliance on a decision of the Australian Court in the case of Mabo and Others v. The State of Queensland, reported in Commonwealth Law Reports Vol. 175 (1992) at page 1. The learned senior counsel had argued that what has been held by the High Court of Australia in the aforesaid case, namely, Aborigines had the title to the land and it never got extinguished by annexation by Crown or by the application of common law in Australia, should apply to the lands within the tribal area in India. But, however, at later point of time the learned counsel did not persue the said contention and, therefore, we have to examine and find out the correctness of the submission as to whether under the Constitutional Scheme there has been a prohibition for alienation of any land within the tribal area in favour of a non-Scheduled Tribes. On going through the Constituent Assembly Debates and the book "The Framing of India's Constitution - A study by B. Shiva Rao as well as b, Shiva Rao's The Framing of India's Constitution Volume III, it appears that on account of the Study already made by the Britishers and several reports obtained prior to Independence, the ques-tion of administration of tribal areas did engage the attention of the Constitution Assembly for a considerable period. The Constituent Assemb-ly had formed two committees, one for the tribal people of Assam and other for the excluded and partially excluded areas in Provinces other than Assam. We are really concerned with the second Committee which had examined the problems of the tribal people in all other parts of the country excepting Assam. The

Committee in fact had suggested that the solution to the problem of backward areas lies in developing the area and not in isolating the same. The Committee had also suggested that it should be the responsibility of the Centre Co draw up the schemes for the development of these areas and ensure that such schemes were duly implemented by the States. But the said report could not be considered by the Constituent Assembly having been received at a late stage. The Drafting Committee of the Constitution, however, considered the suggestion of the Advisory Com-mittee and drafted the Vth Schedule of the Constitution. We are in the present case really concerned with Clause 6 dealing with alienation and allotment of lands which is extracted hereinbelow :

> 6. Alienation and allotment of lands to non-tribals in scheduled areas: (1) It shall not be lawful for a member of the Scheduled Tribes to transfer any land in a scheduled area to any person who is not a member of the Scheduled Tribes;

(2) No land in a scheduled area vested in the State within which such area is situate shall be allotted to, or settled with, any person who is not a member of the Scheduled Tribes except in accordance with rules made in that behalf by the Governor in consultation with the Tribes Advisory Council for the State.

Clause 7 of the Schedule V deals with money lending which is extracted hereunder :

> "7. Regulation of money - lending in scheduled areas: The Governor may, and if so advised by the Tribes Advisory Council for the State shall, by public notification direct that no person shall carry on business as a money- lender in a scheduled area in the State except under or in accordance with the conditions of a licence with the conditions of a licence issued by an officer authorised in this behalf by the Government of the State and every such direction shall provide that a breach of it shall be an offence, and shall specify the penalty with which it shall be punishable."

Clause 9 of Schedule V deals with Governor's power in extending the provision to other areas which is extracted hereunder :

> "9, Application of Part II to areas other than scheduled areas : (1) The Governor may, at any time by public notification, direct that all or any of the provisions of this Part shall on and from such date as may be specified in the notification apply in relation to any area in the State inhabited by members of any Scheduled Tribe other than a scheduled area as they apply in relation to a scheduled area in the State, and the publication of such notification shall be conclusive evidence that such provisions have been duly applied in relation to such other area.
>
> (2) The Governor may by a like notification direct that all or any of the provisions of this Part shall on and from such date as may be specified in the notification cease to apply in relation to any area in the State in respect of which a notification may have been issued under sub-paragraph (1) of this paragraph."

See the framing of India's Constitution by B. Shiva Rao Volume (III).

We are really concerned with Clause 6 of the Draft Constitution dealing with the alienation and allotment of lands to non-tribals in the scheduled areas. The Draft Constitution, therefore, had put two restric-tions, namely, a member of a Scheduled Tribe was not entitled to transfer land within the scheduled area to a member of non-scheduled tribe, and so far as the land vested in the State is concerned, the prohibition was that the said land belonging to the State should not be allotted or settled in favour of a non-scheduled tribe except in accordance with the Rules made in that behalf by the Governor in consultation with the Tribe's Advisory Council. To the aforesaid Draft several amendments were proposed by several Speakers. So far as paragraph 6 of Schedule V of the Draft Constitution is concerned, the proposal in the draft that the land belonging to the State should not be allotted to or settled with any person who is not a member of Scheduled Tribe was rejected and, therefore, in the final form in Schedule V there is no such indication that even the government land within the Scheduled area should not be allotted to a non-Scheduled Tribe person. B. Shiva Rao in his book "THE FRAMING OF INDIA'S CON-STITUTION - A STUDY, dealing with the Scheduled and Tribal Areas has stated that for nearly a century under British rule special laws were applicable to what were called 'backward areas' and two dangers were there to which subjection to normal laws would have specially exposed these people, and both arose out of the fact that they were primitive people, simple unsophisticated and frequently improvident. There was a risk of their agricultural land passing to the more civilized section of the popula-tion, and the occupation of the tribals was for the most part agricultural, and, secondly, they were likely to get into the 'wiles of the moneylender". The primary aim of government policy then was to protect them from these two dangers and preserve their tribal customs : and this was achieved by prescribing special procedures applicable to these backward areas.

After going through the Constituent Assembly Debates, the Draft Constitution in relation to Schedule V and the final Constitution as it emerged, after amendments were brought about, it appears that it was not the intention of the Constitution Makers to prohibit alienation of the land vested in the State within the scheduled area in favour of a non-Scheduled Tribe person. On the other hand, though it was in paragraph (2) of the Draft Constitution of Schedule V but it stood deleted while bringing the Vth Schedule in its final form. In this view of the matter we are unable to accept the contention of Dr. Rajiv Dhawan, learned senior counsel that the framers of the Constitution intended to prohibit alienation of the government land in favour of non- Scheduled Tribe person within the schedule area which has been engrafted in Vth Schedule of the Constitution.

CONSTITUTIONAL MANDATE AS ENGRAFTED IN ARTICLE 46, ARTICLE 39(b) AS WELL AS THE DECLARATION 'RIGHT TO DEVELOPMENT ADOPTED BY UNITED NATIONS - IN RELATION TO PROHIBITION OF ALIENATION OF GOVERNMENT LAND WITHIN THE TRIBAL AREA IN FAVOUR OF A NON-TRIBAL PER-SON As indicated in the earlier part of this judgment vast track of land lie within the tribal area which is rich in mineral resources and the entire mineral resources of the country lie within the schedule area of different States. In interpreting the provisions of the Regulation and the Constitu- tional mandate engrafted in Fifth Schedule of the Constitution as well as different other Articles of the Constitution, it must be borne in mind that the interpretation should subserve the main object, namely the develop-ment of the

schedule area and the protection of the tribal people from exploitation of the non-tribal people. It is in this prospective Article 46 and 37(b) of the Constitution have to be looked into. Article 46 of the Constitution no doubt mandates the State to promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and protect them from social injustice and all forms of exploitation. The said Article embodies the concept of 'distribu-tive justice' which connotes the removal of economic inequalities and rectifying the injustice resulting from dealings or transactions between unequals in society. It means those who have been deprived of their properties by unconscionable bargaining should be restored to their property. By taking recourse to this Article the law invalidating transfers of land belonging to a member of the Scheduled Tribes and restoration of such land to the transferer was held constitutionally valid. Similarly, when Article 39(b) of the Constitution enjoins upon the State to have its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good, what, it connotes is a duty on the State for building of a welfare State and an egalitarian social order. The object is that the basic need of a common man must be fulfilled and the State should endeavour to change the structure of the society. The aforesaid provision no doubt, may support a case of nationalisation of material resources but by no stretch of imagina-tion it can be said that it enjoins upon the State to exploit the mineral resources within the Scheduled area by itself or through the Scheduled Tribes alone. The declaration of 'Right to Development' adopted by the United Nations and ratified by India no doubt casts a responsibility on the State to promote and protect social and economic order for development of all people and it has become a States' responsibility to create conditions favourable to the realisation of the right to development. In other words it is the State's responsibility to ensure development and eliminate the obstacles to the State development. It is the States' responsibility to cradi-cate social injustice. It is the State's responsibility to see the upliftment of the tribals within the Scheduled areas. There possibly cannot be; any dispute with the proposition that the State should formulate its policies and laws so that the neglected tribals within the Scheduled areas get equal opportunity with their counterparts in the other sophisticated parts of the State and State should be empowered to make laws for protection of these tribals from being exploited by the non-tribals. State should take all effec-tive steps so as to eradicate inequalities.

The aforesaid scheme of the Constitution in cur considered opinion does not in any manner suggest that alienation of Government land within the schedule area was intended to be prohibited in favour of a non-tribal person.

ARTICLE 244 AND FIFTH SCHEDULE OF THE CONSTITUTION :

> Article 244(1) of the Constitution makes the provisions of the Fifth Schedule applicable to the Schedule areas and Scheduled Tribes in all State other than Assam and Meghalaya. Article 244(1) of the Constitution read with Fifth Schedule vests with the Governor of the State, the entire governmental power in respect of the schedule areas within the State, The framers of the Constitution found the necessity of vesting such power on the Governors of the State as the people of the Scheduled areas were culturally backward and their social and other customs are different from the rest of the country. Which area is the Scheduled area within the State is determined by the

President by an order. By virtue of the Fifth Schedule of the Constitution the Governor is authorised to direct that any Act of Parliament or of the Legislature of a State shall not apply to a Scheduled area or shall apply only subject to exceptions and modifications. The Governor is also authorised to make regulations to prohibit or restrict transfer of land by or amongst the members of the Scheduled Tribes, regulate the allotment of land and regulate the business of moneylending and all such regulations by the Governor have to be assented to by the President.

Section 5(2) of Schedule V indicates the amplitude of the Governor's power to make regulation for peace and good government in the Scheduled area in a State. It also stipulates the field over which regulations can be framed by the Governor as contained in Clauses (a) to (c) thereof. The Governor is the sole judge to decide as to what would be the regulation which would be necessary for the peace and good government of the area in question. The ambit of the power of Governor is not restricted to the entries in the Vllth Schedule and the Governor is empowered even to over-ride an act of Parliament or of a State Legislature so far as its applicability to the Scheduled area is concerned. Clauses (a) to (c) of Section 5(2) of Schedule V indicate that the Governor may frame regula-tion prohibiting or restricting the transfer of land by or among members of the Scheduled Tribes within the Scheduled area, regulate the allotment of lands to the members of the Scheduled Tribes in the area; and regulate the carrying on of business as money-lender by persons who lend money to the members of the Scheduled Tribes in such area. It would thus appear, as the Britishers during the British rule, were really concerned to save the tribals of the area from being exploited by the non-tribals, after coming into force of the Constitution, smiliar power was conferred on the Gover-nor to make regulation for achieving the same object, namely, to save the tribals belonging to the scheduled area from the exploitation of non- tribals. Any Regulation framed by the Governor required to be interpreted bear-ing in mind the aforesaid objective with which the Constitution conferred power on the Governor under the Fifth Schedule.

THE ANDHRA PRADESH SCHEDULE AREA LAND TRANSFER REGULATION 1959 - WHETHER REGULATION 3(1) IS CON-TRAVENED BY GRANT/RENEWAL OF MINING LEASES IN FA VOUR OF NON-TRIBALS.

This Regulation has been framed by the Governor in exercise of power conferred upon him under Paragraph 5(2) of the Fifth Schedule to the Constitution. The original Regulation is Regulation 1 of 1959 which was subsequently amended in 1970. The original Regulation prior to its amendment so far as transfer of immovable property by members of Scheduled Tribes is concerned, as contained in Regulation 3 stood thus :

"3. (1) Notwithstanding anything contained in any enactment, rule or law in force in the Agency tracts, any transfer of immovable property situated in the Agency tracts by a member of a Schedule Tribe, shall be absolutely null and void unless made -

(i) in favour of any other member of a Scheduled Tribe or a registered society as defined in clause (f) of Section 2 of the Madras Co-operative Societies Act, 1932 (Madras Act VI of 1932), composed solely of members of the Scheduled Tribes, or

(ii) with the previous sanction of the State Government, or subject to rules made in this behalf, with the previous consent in writing of the Agent of any prescribed officer.

Explanation. - The expression "transfer" in this section includes a sale in execution of a decree and also a transfer made by a member of a Scheduled Tribe in favour of any other member of a Scheduled Tribe benami for the benefit of a person who is not a member of a Scheduled Tribe.

(2)(a) where a transfer of immovable property is made in contravention of sub-section (1), the Agent, the Agency Divisional Officer or any other prescribed officer may, on application by any one interested, or on information given in writing by a public servant, or suo moto decree ejectment against any person in possession of the property claiming under the transfer, after due notice to him in the manner prescribed and may restore it to the transferor or his heirs.

(b) If the transferor or his heirs are not willing to take back the property or where their whereabouts are not known, the Agent, the Agency Divisional Officer or prescribed officer, as the case may be, may order the assignment or sale of the property to any other member of a Scheduled Tribe or a registered society as defined in clause (b) of section 2 of the Madras Co-operative Societies Act, 1932 (Madras Act VI of 1932), composed solely of members of the Scheduled Tribes, or otherwise dispose of it, as if it was a property at the disposal of the State Government.

(3) (a) Subject to such conditions as may be prescribed, an appeal against any decree or order under sub- section (2) shall lie within such time as may be prescribed -

(i) if the decree or order was passed by the Agent, to the State Government;

(ii) if the decree or order was passed by the Agency Divisional Officer, to the Agent; and

(iii) if the decree or order was passed by any other officer, to the agency Divisional officer or Agent, as may be prescribed.

(b) the appellate authority may entertain an appeal on sufficient cause being shown after the expiry on the time limit prescribed thereof."

After the amendment in 1970 Section 3(1) reads thus :

> "(a) Notwithstanding anything contained in any enactment, rule or law in force in the Agency tracts, any transfer of immovable property situated in the Agency tracts by a person, whether or not such person is a member of Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of a person, who is a member of Scheduled tribe or a society registered or deemed to be registered under

the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964), which is composed solely of members of the Scheduled Tribes.

(b) Until the contrary is proved, any immovable property situated in the Agency tracts, and in the possession of a person who is not a member of a Scheduled Tribe, shall be presumed to have been acquired by such person or his predecessor in possession through a transfer made to him by a member of a Scheduled Tribe.

(c) Where a person intending to sell his land is not able to effect such sale, by reason of the fact that no member of a Scheduled Tribe is willing to purchase the land on the terms offered by such person, then such person may apply to the Agent, the Agency Divisional Officer or any other prescribed officer, for the acquisi-tion of such land by the State Government, and the Agent, Agency Divisional Officer or the prescribed officer, as the case may be, may, by order, take over such land on payment of compensation in accordance with the principles specified in Section 10 of the Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961 (Act X of 1961), and such land shall thereupon vest b the State Government free all encumbrances and shall be disposed of in favour of members of the Scheduled Tribes or a society registered or deemed to be registered under the Andhra Pradesh Co-opera-tive Societies Act, 1964 (Act 7 of 1964) composed solely of mem-bers of the Scheduled Tribes or in such other manner and subject to such conditions as may be prescribed."

So far as the regulation prior to its amendment in 1970 is concerned, a plain reading thereof clearly indicates that the Governor has framed the regulation as a regulatory measure putting some embargo on the power of transfer of a member belonging to Scheduled Tribe in respect of his immovable property. The said embargo enabled a member of a Scheduled Tribe to transfer the immovable property only in favour of another member of a Scheduled Tribe or in favour of a co-operative society composed solely of members of a Scheduled Tribe. If the transfer was intended to be made in favour of a non-Scheduled Tribe member then it could be so made but only with previous sanction of the State Government or with the previous consent in writing of the agent or any prescribed officer subject to the rules made in that behalf. Thus immovable property even belonging to a Scheduled Tribe could be lawfully transferred in favour of a non-Scheduled Tribe member but only with previous sanction of the State Government. Under the pre-amended provisions, therefore question of any felter on the powers of the State Government in transferring government land in favour of a non-tribal did not arise at all. The question that arises for considera-tion is whether there has been any change under the provisions of 1970 and has there been a total prohibition of transfer of any land in favour of a non-Scheduled Tribe person in the Agency tracts.

Dr. Rajiv Dhawan, learned senior counsel appearing for the appel-lant in this context advanced his argument that the entire object of the Amendment Act of 1970 was to prohibit totally transfer of any land in favour of a non-tribal member within the Agency tract and accordingly the word 'person' b Section 3(l)(a) of the regulation after the amendment would bring within its sweep the State Government though ordinarily the expression 'person' may not bring within its sweep the State

Government. According to Mr. Dhawan, learned senior counsel appearing for the ap-pellant the word 'person' must be given the widest interpretation so as to bring within its sweep the State Government which would be consistent with the very object for which the amendment was brought into force so that the integrity of the tribal regime is maintained. On being faced with the difficulties in giving same interpretation to the word 'person' used in Section 3(l)(a) throughout the learned counsel urged that it is permissible to give a different meaning to the same word used in the same statute depending upon the object sought to be achieved by the statute and, therefore, it would be within the principles of interpretation to interpret the word 'person' occuring in First Part of Section 3(1) (a) to include the State Government whereas the same word 'person' used in the latter part of Section 3(l)(a) may be interpreted to mean 'an individual'. In support of this contention the learned counsel relied upon the decisions of this Court in the case of State of West Bengal v. Union of India, [1964] I SCR 371, Printers (Mysore) Ltd & Anr. v. .Asstt. Commercial Tax Officer & Others, [1994] 2 SCC 434; Commissioner of Income Tax, Bangalore v. J.H. Gotla Vadagin, [1985] 4 SCC 343 and Dr. M. Ismail Faruqui and Others Etc. Etc. v. Union of India & On. Etc. Etc., [1994] 6 SCC 360. The learned counsel also urged that this Court has accepted the principle that a wide interpreta-tion has to be given to the meaning of immovable property while interpret-ing the provisions of the regulation in order to fulfil the purpose of the tribal area regulation in the case of P. Rami Reddy & Ors, Etc. v. State of Andhra Pradesh & Anr. Etc., [1988] Supp. 1 SCR 443, Lingappa Pochanna Appelwar v. State of Maharashtra & Anr. Etc., [1985] 1 SCC 479 and Manchegowda and Others v. State of Kamataka and Others, [1984] 3 SCC 301, and therefore, the same rules of construction of giving a wider inter-pretation to the expression 'person' used in Section 3(l)(a) of the regula-tion should be adhered to.

Mr. Sudhir Chandra, learned counsel appearing for the respondent, on the other hand contended that the regulation in question prior to its amendment does not prohibit transfer of land by any person in favour of non-Scheduled Tribe person but merely postulates that such a transfer must be with the consent of the competent authority. Though after the amendment in 1970 a more stringent measure has been adopted but all the restrictions are in relation to the land belonging to a Scheduled Tribe. A statutory presumption has been brought in so that whenever within the Agency tract any immovable property is found to be in possession of a non-Scheduled Tribe person then burden would be on the non-Scheduled Tribe person to establish that he has not come in possession of the land by way of a transfer from the Scheduled Tribe person. The aforesaid stringent provisions has obviously been made to achieve the main objective to save the tribals from the exploitation of non-tribals. But by no stretch of imagination the restrictions contained in regulation 3(1) even after its amendment can be said to apply to tie State Government in respect of the government land. According to the learned counsel Mr. Sudhir Chandra if interpretation as to the word 'person', as, contended by Dr. Rajiv Dhawan, learned senior counsel is accepted then it would lead to absurdity and the provisions of Section 3(1) (a) would be meaningless. The learned counsel further contended that there is intrinsic evidence in clause (a) itself to hold that the word 'person' does not include State. Lastly, the learned counsel urged that bearing in mind the object with which the constitution has conferred power on the Governor to frame regulation and the object with which the Governor has framed the regulation, there is no imperative to construe the word 'person' in Section 3{l)(a) of the regulation to include the State Government. Such an interpretation according to the learned counsel for the respondents would go against the concept of upliftment of the tribals within the

tribal area inasmuch as even the State Govenunent would be denuded of its power of transferring government land in favour of any non-Scheduled Tribe person or organisation even for the purpose of setting up of a hospital or any other philanthropic purpose. When mines and minerals lie in abundance mostly in the tribal areas and vest in the State Government, if the embargo contained in regulation 3(l)(a) applies to the State Government by interpreting the word 'person' to include the State Government then there cannot be any exploitation of mineral resour-ces in the country unless it is done either by the State itself or through the Scheduled Tribe person and such interpretation would be grossly detrimental to the general upliftment of the tribal people and, therefore, the counsel suggests that such an interpretation would not be given to the word 'person' in regulation 3(l)(a).

In view of the rival submissions at the Bar the crucial question arises for consideration is how the word 'person' in first part of regulation 3(l)(a) is to be interpreted? In other words the very word 'person' used in regulation 3(l)(a) itself whether should be interpreted differently and whether such an interpretation is necessary to subserve the object for which the regulation has been brought forward. As has been stated earlier, the history of legislation as discussed, treating the tribal areas different from the other areas is basically intended to save the tribal people from being exploited by the non-tribals. It is with that objective Article 244 of the Constitution made the Fifth Schedule applicable to administer scheduled area and tribal area and the Fifth Schedule of the Constitution, in turn, conferred power on the Governor to notify the laws made by Parliament or by the legislature of the State to apply or not to apply and further Governor has been conferred power to make regulation for the peace and good government of any area within a State. Such wide power has been conferred upon the Governor which is plenary in nature so that Governor can by regulation prevent exploitation of the tribals from the non-tribals. When such legislations made by Governor in exercise of power has been challenged, Courts have upheld the validity of the same on the ground that it is intended to save the tribals from the other non-tribals in the area who usually take advantage of the simplicity and ignorance of the tribal people. But it is difficult to accept the contention of Dr. Rajiv Dhawan, learned senior counsel appearing for the appellant, that the constitutional scheme intended total prohibition of transfer of even the government land in favour of the non-tribal In P. Rama Reddy's case (supra) this Court after tracing the history of the Regulation, namely, Andhra Pradesh Scheduled Area Land Transfer Regulation, 1959 (Regulation I of 1959) and the subsequent amendment thereto in the amending Regulation of 1970 came to the conclusion that 1959 Regulation was amended as difficulties were ex-perienced by the Government in implementing the ejectment procedures under the said Regulation, inasmuch as it was not always easy for the concerned authority to ascertain the origin of the right under which the non-tribal is claiming possession and whether the land under possession of a non-tribal was previously acquired from a tribal or not. According to the learned judges the changes effected by the amended Regulation were :

> (i) A rule of presumption was introduced to the effect that unless the contrary is proved, where a non-tribal is in possession of land in the Scheduled areas, he or his predecessors-in-interest, shall be deemed to have acquired it through transfer from a tribal;

(ii) Transfers of land in Scheduled Areas in favour of non-tribals shall be wholly prohibited in future;

(iii) Non-tribals holding lands in the Scheduled Areas shall be prohibited from transferring their lands in favour of persons other than tribals. Only partitions and devolution by succession of lands held by them shall be permitted; and

(iv) Where a tribal or non-tribal is unable to sell his land to a tribal on reasonable terms, it shall be open to him to surrender the land to Government who shall thereupon be obliged to acquire it on payment of appropriate compensation."

Thus, the changes brought about by the amended Regulation of 1970 were essentially intended to facilitate effective enforcement of 1959 Regulation and the object of the amended regulation cannot be held to be total prohibition of alienation of all land including a government land within the scheduled area in favour of a non-tribal. Bearing in mind the aforesaid object of the amended regulation and the Constitutional scheme the word 'person' used in regulation 3 (l)(a) has to be construed and while so construing certain principles of statutory interpretation have also to be borne in mind.

WHETHER THE WORD 'PERSON' IN THE REGULATION SHOULD BE INTERPRETED DIFFERENTLY AND IN THE FIRST PART OF REGULATION 3(1)(a) IT SHOULD BE INTERPRETED TO INCLUDE STATE WHEREAS IN THE OTHER PART II SHOULD BE INTERPRETED TO MEAN A NATURAL PERSON.

Or. Rajiv Dhawan, the learned senior counsel appearing for the appellant contended that the word 'person' occurring in first part of Section 3(a) of the Regulation should be construed to mean the 'State' so that the real object of prohibiting alienation of any land within the scheduled area in favour of a non-tribal person can be achieved. According to the learned counsel it is a permissible rule of construction of a statute to construe the same words used in the same statute differently depending upon the context in which it is used and the object sought to be achieved. Mr. Sudhir Chander, learned counsel appearing for the respondents on the other hand contended that ordinarily a particular word used in a particular statute should receive the same meaning unless and until it is necessary to ascribe a different meaning to achieve any particular objective for which the statute is intended. But according to the learned counsel it was not the intention of the Constitution makers to prohibit alienation of any land within the scheduled area in favour of a non tribal person and on the other hand the objective was to put restrictions on the tribal people from transferring their land in favour of non-tribal person so that the tribal people can be saved from being exploited by the sophisticated non-tribals people. This being the objective, there is no necessity to construe the word 'person' in first part of clause 3(1) (a) of the Regulation to include the State Government also.

It is a cardinal rule of construction of statute that the statute must be read as a whole and construction should be put to all the parts together and not of anyone part only by itself. Every clause of a statute is required to be construed with reference to the context and other clauses of the

Act so that so far as possible the meaning of the enactment of the whole statute would be consistent. When legislature uses the same word in different parts of the same Section or statute, there is a presumption that the word is used in the same sense throughout. It was so held by this Court in the following cases : Suresh Chand v. Gulam Chisti, [1990] 1 SCR 186; Mohd. Shafi v. Seventh Additional District & Sessions Judge, Allahabad & Ors.t [1977] 2 SCR 464; Raghubans Narain Singh v. The Uttar Pradesh Government through Collector of Bijnor, [1967] 1 SCR 489. But the aforesaid presump-tion can easily be displaced by the context in which the particular word is used. In Farrell v. Alexander, [1976] 2 All England Report 721, it was stated that where the draftsman uses the same word or phrase in similar context, he must be presumed to intend it in each place to bear the same meaning. Venkatarama Ayyar, J. in the case of Shamrao Vishnu Parulekar v. District Magistrate, Thana, [1956] SCR 644 discussing the aforesaid rule has said The rule of construction contended for is well settled but that is only one element in deciding what the true import of enactment is to ascertain which is necessary to have regard to the purpose being the particular provision and its setting in the scheme of the statute."

In Madras Electric Supply Corporation Ltd. (in Liquidation) v. Boardland (Inspector of Taxes), All England Law Reports, [1955] 1 Page 753, Lord Macdermott pointed out "the presumption that the same word is used in the same sense throughout the same enactment acknowledges the virtues of an orderly and consistent use of language, but it must yield to the requirements of the context and it is perhaps at its weakest when the word in question is of the kind that readily draws its precise import, its range of meaning, from its immediate setting on the nature of the subject with regard to which it is employed. But this Court has accepted the principle that the same word used at different places in the same clause of the same Section may not bear the same meaning at each place having regard to the context of its use. In fact in the case of Maharaj Singh v. State of U.P. & Ors., [1977] 1 SCR 1072, the word Vest' used in the same Section of U.P. Jamindari Abolition and Land Reforms Act was interpreted to mean although the vesting in the State was absolute but the vesting in the Sabha was limited to possession and management. This case illustrates that even a word which is used more than once in sub-section of a section may connote and denote divergent things pending upon the context. Therefore, though on principle the contention of Dr. Rajiv Dhawan, learned senior counsel appearing for the appellant that the word 'person' used in Section 3(l)(a) of the Regulation can be given different meaning in the first part than the meaning to the same word given in the second part of regulation may not be, taken exception, but the question arises whether in the constitutional scheme under which the regulation has been framed and the object and purpose for which the regulation has been framed by the Governor, does it warrant to give a different meaning to the same word 'person' in different part of the regulation. It may not be out of place to bear in mind the normal rule that general words in a statute must receive a general construction unless there is some thing in the act itself such as subject matter with which the act is dealing or the context in which the words are used to show the intention of the legislature that they must be given a restrictive or wider meaning.

Let us examine some of the authorities cited at the Bar in this regard. In Appiin v. Race Relations Board, [1974] 2 All ER 73, the word 'person' was defined to include a local authority in the context in which the word has been construed. In the case of Printers (Mysore) Ltd. and Anr. v. Asstt. Commercial Tax Officer & Ors. (supra) relied upon by Dr. Rajiv Dhawan, learned senior counsel,

appearing for the appellant, the question for consideration was whether the expression 'goods' occuring in Section 8(3)

(b) of the Central Sales Tax Act within the phrase 'for use by him in the manufacture or processing of goods for sale' does take within itself the newspaper and this Court answered the question agreeing with the view taken by the Madras and Kerala High Courts that the goods does include newspaper. This Court relied upon the ratio in T.M. Kanias' case [1968] 2 SCR 103 and Pushpa Devi's case [1990] 2 SCC 134 and held that it is well settled where the context does not permit or where it would lead to absurd or unintended result, the definition of an expression need not be mechani-cally applied. In Dr. M. Ismail Faruqui & Ors. Etc. Etc. v. Union of India and Ors. Etc. Etc. [1994] 6 SCC 360, on which Dr. Rajiv Dhawan relied very strongly, the majority view held the word "vest' in Section 3 of the Act has shades taking colour from the context in which it is used. It does not necessarily mean absolute vesting in every situation and is capable of bearing the meaning of a limited vesting being limited in tittle as well as duration. It was further held the meaning of the word Vest' used in Section 3 has to be determined in the light of the text of the statute and the purpose of its use. Ultimately the Court held while upholdirg the statue that the vesting of the disputed area in the Central Govt. by virtue of Section 3 of the Act is limited as a statutory receiver, with the duty for its management and administration according to Section 7 requiring maintenance of status quo therein in Sub Section (2) of Section 7 of the Act. Whereas the vesting of the adjacent area other than the disputed area acquired by the Act in the Central Government by virtue of Section 3 of the Act is absolute with the power of management and administration thereof in accordance with sub-section (1) of Section 7 of the Act till its further vesting in any authority or other body or trustees of any trust in accordance with Section 6 of the Act. The minority view, however, construing Section 3 and 4(1) held that the area includes the whole bundle movable and immovable property under the area specified in the Schedule and all other rights and interests therein or arising thereof and the whole bundle of property and right vests by reason of Section 4(2) in the Central Government free and discharged from all encumbrances and held the Act to be unconstitutional as the provisions of Section 3, 4 and 8 were held to be invalid. The majority view of the Court expressed through Verma, J, held that a construction which a language of the statute can bear and promote larger national purpose must be preferred to a strict literal construction tending to promote factionalism and discord. But on examining the provisions of Section 3(1) (a) of the Regulation after its amendment I am unable to persuade myself to interpret the word 'person' used in Section 3(1)00 of the regula-tion differently as in my view neither the context in which the word has been used calls for such an interpretation nor the interpretation of giving a literal meaning to the word would lead to any absurdity or unintended result nor even it can be said to be promoting larger national purpose. In P, Rami Reddy's case [1988] Supp, 1 SCR 443, the validity of Section 3(1) of the amended regulation had been assailed and this Court tracing a short history of legislation came to hold that a legislation which in spirit sense and substance aims at restoration of the tribal land which originally belong to the tribals but which passed into the hands of noa tribals cannot be characterised as unreasonable. The Court sustained the legislation on the ground that in the absence of protection economically stronger non tribals would in course of time devour of the available lands and wipe out the very identity of the tribals who cannot survive in the absence of the only source of livelihood they presently have. The Court also noticed the fact that under the pro-amended provisions of the regulation (Regulation 1 of 1959) transfer of immovable properties situated in the scheduled areas

from a member of a Scheduled Tribe to non tribals without previous sanction of the State Government was prohibited. The amendment in question in the year 1970 was introduced to facilitate effective enforcement of the regula-tions of 1959. In other words, transfer of land in scheduled area in favour of non tribal became prohibited and non tribals holding land in the scheduled area were prohibited from transferring the land in favour of persons other than tribals and further the statutory presumption was introduced in regulation 3(1) (b) casting burden on the non tribals when he is found to be in possession of a land within the scheduled area to establish that he has not acquired the same from a scheduled tribe. In the aforesaid case the Court did not accept the argument advanced on behalf of the non-tribal that the expression 'land' has been used in its restricted sense in paragraph 5(2) (a) of Schedule V of the Constitution.

In the aforesaid P.R. Reddy's case (supra) the Court also took note of the earlier case in Manchegowda & Ors. v. State of Kamataka & Ors,t [1984] 3 SCC 301 where constitutional validity of a similar provision in respect of tribal area of Karnataka was under challenge and the Court upheld the constitutionality with an eye to preserve and protect the tribals in the land in the tribal areas. But in none of the aforesaid cases the question of power of the government to transfer the government land had come up for consideration. The Constitutional scheme embodied in Article 15(4) and Article 46 as well as the power conferred upon the Governor of the State under Schedule V of the Constitution are intended to preserve and protect the interest of the tribal in the tribal areas. It cannot be said by any stretch of imagination that all lands within the tribal areas vest in the tribal people. State is the paramount owner of lands and in the garb of preventing the exploitation of tribals from the non-tribals so far as the lands belonging to the tribals are concerned, the State cannot be denuded of its power to exploit resources which vest with the State. Judged from this angle there is no justification for interpreting the word 'person' in the first part of Section 3(l)(a) of the regulation to include State and, therefore, the prohibitions and restrictions contained in the regulation would not apply to the lands belonging to the State. The word 'person' used in the federal statute imposing tax on persons selling liquor came up for consideration in the case of State of Ohio v. Guy T. Helvering, 85 U.S. Supreme Court Reports 78 Law Edition 1307, it was held that the State engaging in the selling spiritual liquors is not immune from the excise tax imposed by the Federal Government on those engaging in such business, since in doing it is not performing any governmental function. It was also held that a State is embraced within the meaning of the term 'person' as used in a statute imposing an excise tax on persons selling liquor and the word person shall be construed to mean and include a partnership, association, company or corporation, as well as a natural person. In the case of United States of America v. Cooper Corporation et al, US Supreme Court Reports 85 Law Edition 1071 the word 'person' used in Section 7 of the Sherman anti- trust Act came up for consideration and it was held that United States is not a person entitled to maintain an action for treble damages within the mean-ing of Section 7 of the Act. It has been held in the aforesaid case that it may be assumed, in the absence of any indication to the contrary, that the term 'person' when used in different sections of a statute, was employed throughout the statute in the same, and not in different senses. It was also held in the aforesaid case that it is not for the Courts to indulge in the business of policy making in the field of Federal anti-trust legislation, but their function ends with the endeavour to ascertain from the words used, construed in the light of the relevant material, what was in fact the intent of the Congress. In the case of Union of India v. Jubbi and Dunia Etc., [1968] 1 SCR 447, the question that arose for consideration is whether under the

provisions of Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 whether tenants under the Union of India as the land owner can acquire proprietary rights. Repelling the arguments advanced by the Union of India that the Act is not intended to be applicable to the lands to the Union this Court held that the object of the Act was to abolish big landed estate and alleviate the conditions of oc- cupancy tenants by abolishing the proprietary rights of the land-owners in them and vesting such rights in the tenants and that being the object of the legislature it is hardly likely that it would make any discrimination between the State and the Citizens in the matter of the application of the Act, The ratio of all the aforesaid cases can be summed up thus : though ordinarily a particular word used in a statute should be given the same meaning but it is permissible to construe the said word differently depending upon the object of the Act and the scheme of the Act and the purpose sought to be achieved by Act.

Coming now to the core question of interpretation of the word 'person' in regulation 3(l)(a) under the Amended Act if word 'person' used in Section 3(l)(a) is interpreted to mean to include the State then the expression 'whether or not such a person is a member of a Scheduled Tribe becomes meaningless as the State can never be a member of the Scheduled Tribe. If a literal meaning to the word 'person' is given in Section 3(1)(a) of the regulation then the prohibitions on restrictions contained therein would apply with full force to inter se transfer of land between the Scheduled Tribe and non-Scheduled Tribe and such an interpretation would subserve the main object of the legislation, namely, to save the tribal people from being exploited upon by the non-tribal people. If the constitutional scheme embodied in Articles 15(4) and 244 as well as in the Fifth Schedule is intended to save the tribal people from being exploited upon by the non- tribal both in relation to their lands as well as in the matter of taking loans from the moneylenders, there is no obligation to construe the word 'person' to include the State in the first part of Section 3(l)(a) of the regulation. In view of the history of legislation already traced in the earlier part of this judgment, it is crystal clear that the prohibitions and restrictions never intended for the lands belonging to the government and the provisions both prior to the Constitution and under the Constitution are intended to deal with the tribal people separately so that better attention can be bestowed for their social and economical upliftment. It is with this objective Fifth Schedule of the Constitution conferred power on the Gover-nor not only to indicate which laws made by the Parliament and the State legislature would apply within the Scheduled area and which laws would not apply, but further to make regulation for administration of the tribal areas for peace and good government in respect of a scheduled area. The matters indicated in Sub-Section (2) of Section 5 of V Schedule of the Constitution as well as the general power of the Governor to frame regulation contained in Sub-Section (1) of Section 5 of V Schedule, neither expressly nor by necessary implication prohibit transfer of government land in favour of a non-tribal within the scheduled area nor there is any mandate embodied in Article 15(4) or in Article 244 prohibiting the transfer of government land in favour of a non-Scheduled Tribe person within the scheduled area. In this perspective I do not find any force in the contention of Dr. Rajiv Dhawan to interpret the word 'person' in the first part of regulation 3(l)(a) to include the State and to interpret person in the second part of said Section 3(l)(a) of the regulation to mean an ordinary in-dividual. In my considered opinion the expression 'person' used in Section 3(l)(a) of the regulation should have its natural meaning throughout the Section to mean 'natural person' and it does not include the State. In other words, the State is not denuded of its power in the matter of exploiting its mineral resources within the scheduled area by a grant or renewal of lease even in

favour of non-tribal persons and the restrictions and embargo contained in regulation 3(l)(a) is not applicable to the State in dealing with the land belonging to the State.

In this view of the matters, it must be held that the provisions of the Regulation have not been contravened by granting mining leases in favour of the Non-Scheduled Tribe person within the Schedule Area. Notwithstanding my conclusion that the word 'person' occuring in Section 3(1) of the Regulation does not include 'State' and as such the mining leases granted in favour of different persons do not contravene the provisions of the Regulation but I am inclined to agree with the observa-tions made by Brother Ramaswamy, J. that the lessees should be required to spend a part of the profit for the upliftment of the tribals and for maintaining the ecology in the scheduled areas. Notwithstanding the con-stitutional obligation of the Governor to make special provision for ameliorating the economic status of the tribal people so as to assimilate them into the national main stream, nothing tangible appears to have been achieved in this regard even after 50 years of independence. The tribal people who constitute a substantial majority of the Indian population still spend their time in jungles and other inexcessible areas and sufficient legislative and executive measure has not been taken for improving the living conditions of these tribal people. Since the mining activities are being carried out mostly within the scheduled areas it is the duty of the State to see that a part of the profits earned by the lessees should be spent for ameliorating the living conditions of the tribals by the lessees themselves. It is in this context brother Ramaswamy, J. has made some observations at pages 141 and 142 of the judgment which have my general concurrence but the said objective has to be achieved by appropriate legislation making it compulsory for the lessees within the tribal area to spend a portion of the income arising out of the mining business for the general upliftment of the living conditions of the tribal people. This should be in addition to the royalty and other cess under different legislations. The State may also consider the question of incorporating some provisions in the leases itself for achieving the aforesaid objectives, GRANT/RENEWAL OF MINING LEASES AND CONTINUANCE OF THE MINING OPERATIONS WHETHER CONTRAVENES THE PROVISIONS OF THE CONSERVATION ACT?

Mr. Dhavan, the learned senior counsel for appellant contended that the Conservation Act has been enacted for conservation of forest and for matters connected therewith or ancillary or incidental thereto. Deforesta- tion having caused ecological imbalance and having lead to environmental deterioration, with a view to checking further deforestation, the President promulgated the Forest (Conservation) Ordinance, 1980 on 25th October, 1980. The said Ordinance had made the prior approval of the Central government necessary for deforestation of reserved forests or for use of forest land for non-forest purposes. The aforesaid Ordinance was replaced by the Forest (Conservation) Act, 1980 (No. 69 of 1980). Under Section 2 of the said Act which being with a non-obstante clause to the effect "Notwithstanding anything contained in any other law for the time being in force in a State" no State Government except with the prior approval of the Central Government can direct that any forest land or any purposes. Explanation to Section 2 provides the meaning of the expression 'non-forest purpose'. Clause (b) of the said Explanation stipulates that any purpose other than re- afforestation would be a non-forest purpose. This being the position and mining activity being admittedly a non-forest pur-pose, the land in question could not have been permitted to be used for such non- forest purpose without the prior approval of the Central Govern-ment as required by Section 2 of the Conservation Act. The High Court according to the

learned counsel, committed serious error in coming to the conclusion that the Conservation Act applies only to the reserved forests. Dr. Dhawan contended that the word 'forest' must be given a wider meaning and should include all forests commonly known as forest and, therefore, even if the area on which mining activities are carried on by the respondent do not form a part of reserved forests in asmuchas no notifica-tion under Section 20 of the Indian Forest Act has been issued but all the same the provisions of the Forest (Conservation) Act would become ap-plicable. The Conservation Act was further amended by Act 69 of 1988 with Presidential assent on 17.10.1988 and was published in the Gazette of India on 19.12.1988. By way of amendment Clause (3) was inserted to Section (2) which reads thus :

> (iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;

Dr. Dhawan, the learned counsel contended that in view of the aforesaid provision no lease could be granted or renewed after 19.12.1988 in favour of any authority without the prior approval of the Central Government. Consequently the impugned leases must be held to be invalid as having contravened the provisions of Section 2 of the Conservation Act. The High Court in the impugned judgment, however, proceeded on the basis that the Conservation Act is applicable only to the reserved forests and does not apply to any other category of forests. Bearing in mind the objects sought to be achieved by the Conservation Act, we see no justifica-tion to give a restrictive meaning to the expression 'forest land' used in Section 2 of the Conservation Act. On the other hand the expression 'forest land' should be given an extended meaning to cover a track of land covered with trees, shrubs, vegetation and undergrowth under mingled with trees with pastures, be it of natural growth or man made forestation. This Court in the case of Supreme Court monitoring Committee v. Mussoorie Dehradun Dev. Aty. & Ors., in Writ Petition (Civil) No. 749 of 1995 has held "that the term 'forest land' has not been defined under the Indian forest Act, 1927 or the 1980 Act and, therefore, have to be understood as including an extensive track of land covered with trees and undergrowth sometimes intermingled with pasture, i.e. it will have to be understood in the broad dictionary sense. So understood any area which the State considers to be forest and is governed under that law will also be subject to Section 2(ii) of the 1980 Act". Viewed in this light, any land which the State of U.P. by Notification declares to be a forest would be governed under Section (ii) of the 1980 Act. In T.N. Godavaraman Thirumulkpad v. Union of India & Ors,, in Writ Petition (Civil) No. 202 of 1995, the question relating to protection and conservation of the forests throughout the country was considered by this Court, the Court observed : "The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance: and therefore, the provisions made therein for the conservation of forest and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof, The word 'forest: must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term 'forest land', occurring in Section 2, will not only include 'forest' as understood in the dictionary sense, but also any area recorded as forest in the Govern-ment record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest

Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so under-stood irrespective of the ownership or classification thereof." The Court also in the aforesaid case gave a general direction to the following effect: "In view of the meaning of the word 'forest' in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any 'forest'. In accordance with Section 2 of the Act all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is, therefore, clear that the running of saw mills of any land including veneer or ply- wood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest Conservation Act, 1980. Every State Government must promptly ensure total cessation of all such ac-tivities forthwith." In the case of Divisional Forest Officer and Others v. 5. Nageswaramma, [1996],6 SCC 442, this Court has held that renewal of any mining lease could be done only in accordance with the law prevailing on the date of renewal and, therefore, if any renewal of mining lease has been done in violation of Section 2 of the Forest Conservation Act, in asmuchas no prior approval of the Central Government has been obtained, then such renewal is invalid and inoperative.

In view of the afroresaid legal position it is difficult to sustain the conclusion of the High Court in the impugned judgment that the Conser- vation Act applies only to a reserved forest. The said conclusion of the High Court therefore, is set aside. Consequently, it must be held that no mining activities can continue on any forest land unless prior approval of the Central Government is obtained as required under Section 2 of the Conservation Act. Mr, Sudhir Chandra, learned counsel appearing for the respondents contended that he does not dispute the proposition that the expression 'forest land' in the Conservation Act should be given wider meaning and that mining activities over the forest land cannot continue unless prior approval of the Central Government has been obtained in accordance with Section 2 of the Conservation Act. He vehemently con-tended that the mining activities of the respondents are not over any forest land and the appellants have not produced any material from which this Court can come to the conclusion that it forms a part of the forest even going by the extended meaning of the term 'forest'. As has been stated earlier while narrating the pleadings of the parties, the private respondents have all along asserted that the mining activities in question and their leasehold area over which mining activities are continuing do not form a part of the forest. The State Government though has filed an affidavit but no assertion has been made as to whether the mining areas with which we are concerned in these appeals formed a part of the forest land and thereby required the previous approval of the Central Government for being used for mining purpose. On the other hand, the affidavit of the Government indicates that the mining leases in favour of the private respondents have been granted in accordance with the provisions of the Act and the Rules and there has been no contravention of the provisions of the Forest Conservation Act.

In this state of affairs even though we are of the considered opinion that the forest land in Section 2 of the Conservation Act would receive an extended meaning to include within its sweep an extensive track of land covered with trees, shrubs, vegetation and undergrowth undermingled with trees with pastures, be it of natural growth or man made forestation, yet unless and until it is so determined by the State Government that the mining activities of the respondents are being carried on over forest

land it will not be possible to hold that the provisions of Section 2 of the Conservation Act gets attracted. In this view of the matter, the only possible direction which this Court can issue in the facts and circumstances of the present case is that the State of Andhra Pradesh through its officers of the Forest Department should immediately inspect the mining areas of the private respondents and find out whether the lands covered under the mining leases in question form a part of the forest land and if it comes to the conclusion that it is part and parcel of the forest land and no prior approval of the Central Government has been obtained for carrying out the mining activities then immediate direction should be issued to the respondents to stop the mining activities which would be in consonance with the general direction issued by this Court in Godavaraman's case (supra). We are forced to issue such direction in the case in hand as on the materials produced before us by the appellant and in view of the denial in the counter-affidavit filed by the private respondents as well as the affidavit filed on behalf of the State of Andhra Pradesh, it has not been possible to come to the conclusion affirmatively that the land in question formed a part and parcel of the forest land.

WHETHER THE LEASES CAN BE SAID TO BE IN VIOLATION OF THE ENVIRONMENT (PROTECTION) ACT 1986.

The aforesaid Act (hereinafter referred to as the 'Environment Act') was enacted by the Parliament as it was thought necessary to protect and improve the environment and to prevent hazards to human beings other living creatures, plants and property. A decision in this respect had been taken in June 1970 at the United Nations Conference on the Human Environment held at Stockholm in June, 1972 and India had participated in the said conference. The Objects and reasons of the Act indicates that the decline in the environmental quality has been evidenced by increasing pollution, loss of vegetal cover and biological diversity, excessive con-centrations of harmful chemicals in the ambient atmosphere and in food chains, growing risks of environmental accidents and threats to life support systems and, therefore, word community's resolve to protect and enhance the environmental quality found expression in the decisions taken at the United Nations Conference on Human Environment held in Stockholm in June, 1972. though in India there were several legislations for environmen-tal protection but a need for a general legislation became increasingly evident and, therefore, an enactment was passed. At the outset it may be made clear that in the Writ Petition filed before the High Court no complaint has been made with regard to the violation of the provisions of Environment Protection Act in the matter of granting lease or allowing the mining operation to be carried on. In this Court, however, Dr. Dhawan, learned senior counsel appearing for the appellant contended that the large scale mining operations within the tribal area pollutes the environ-ment in the tribal area and, therefore, the Central Government is under a statutory obligation to protect the environment and coordinate the ac-tivities of the State Government in the matter of granting mining leases within the tribal area which must be subject to the provisions of the Environment Protection Act. And since no steps have been taken by the State Government in this regard, the leases must be held to be invalid. According to Dr. Rajiv Dhawan, learned senior counsel when several industries have been closed down by this Court on the ground that the existence of such industries are hazardous to human life and thereby violates Article 21 of the Constitution, the mining leases within the tribal areas must also be annulled. As the mining activities pollutes the tribal atmosphere, natural flora and fauna of the area and becomes hazardous to the human life within the tribal area, the said activities must be stopped. In support of this contention the learned

counsel placed reliance on the decisions of this Court in the case of Tarun Bharat Sangh, Alwar v. Union of India & Others., [1992] Supp (2) SCC 448, Subhash Kumar v. State of Bihar & Ors.t [1991] 1 SCC 598. Mr. Sudhir Chandra appearing for the respondents contended that neither in the High Court nor in the Special Leave Petition in this court basic facts have been averred to indicate how the mining lease in question infringe the provisions of the environmental laws. He further contended that the decisions relied upon by the learned counsel for the appellant connot have any application particularly in the absence of any basic facts. Having examined the rival contentions on this score, we find sufficient force in the contention of Mr. Sudhir Chandra. It is undisputed that no averment has been made in the Writ Petition filed before the High Court alleging infraction of the environmental laws and necessarily, therefore, no argument had been advanced and the High Court had not considered this question at all. Even in the Special Leave petition filed in this Court only infringement of the provisions of the Conservation Act, the provisions of Scheduled Area Land Transfer Regulation and the provisions of Section 11(5) of the Mine and Minerals Regulation and Development Act have been alleged. In paragraph 2 of the Special Leave Petition the questions of law enumerated for consideration also do not contain any question on the violation of environmental laws. In the absence of any allegation and basic datas and consequently lack of opportunity to the respondents to prove the same it would not be safe for this Court to embark upon an inquiry and come to a conclusion as to whether allowing the mining operations within the tribal area has resulted in the infringe-ment of the Environment protection Act. It would, therefore, be unneces-sary to deal with the decisions cited by Dr. Rajiv Dhawan in support of his contention. The Environment Act consists of four Chapters with 26 Section therein. Chapter-I contains the definitions, Chapter II contains General power of the Central Government, Chapter III contains the prevention, control and abatement of environmental pollution, and Chapter IV con-tains misc. provisions. Environmental pollution has been defined in Section 2(c) to mean the presence in the environment of any environmental pol-lutant. "Environmental pollutant" has been defined in Section 2(b) to mean any solid, liquid or gaseous substance present in such concentration as may be, or tend to be injurious to environment. Section 7 prohibits persons carrying on industry from emission or discharge of environmental pol-lutants in excess of such standards, as may be prescribed. "Prescribed" had been defined in Section 2(g) means prescribed by rules made under this Act. Thus the Rules standard had to be indicated, permissible limit of emission environmental pollutant has to be indicated. Section 8 deals with the embargo on handling of hazardous substances. Section 19 confers power on the persons empowered by the Central Government to enter and inspect any of the premises for the purposes enumerated under Clauses (a) to (c) of Sub-section (1) of Section

10. Section 15 provides the penalty for contravention of the provisions of the Act and the rules made thereunder. Section 19 confers power on the Court to take cognizance of any offence on a complaint being made on that behalf. Section 24 is the overriding provisions of the Act notwithstanding any thing inconsistent therewith contained in any enactment. The combined reading of the aforesaid provisions indicate that there must be necessary particulars to find out whether there has been any emission of the environmental pol-lutant in excess of the standard fixed under the rules and it is only then the question of complaining before a court and taking cognizance of the same would arise. If the averments in the Special Leave Petition are examined from the aforesaid point it would be seen that there is no iota of material to come to the conclusion that on account of the mining

operations conducted by the respondents there has been any emission of environmen-tal pollutant in excess of the standard prescribed under the Rules, nor it is possible to hold that there has been any environmental pollution on account of carrying on the mining operations. In our considered opinion, on the facts alleged it is not possible to embark upon the enquiry as to whether the grant of leases within the tribal area are in violation of the provisions of Environment Protection Act nor the leases can be annulled on that score. Contention of Dr. Dhawan on this score accordingly must be rejected.

Whether the leases in question are contrary to the provisions of the Mines and Minerals Regulation and Development Act (for short 'MMRD Act') Dr. Dhawan, learned counsel appearing for the appellant contended that in view of Section 11(5) of the MMRD Act as amended no mining leases can be governed in favour of any person who is not a member of Scheduled Tribe. Section 11(5) of the MMRD Act reads, thus : .Im20.

> "Notwithstanding anything contained in this Act no prospecting licence or mining lease shall be granted in the Scheduled Areas to any person who is not a member of the Scheduled Tribe, provided that this sub-section shall not apply to an undertaking owned or controlled by the State or Central Government or to a Society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964, which is composed of members of Scheduled Tribes".

There cannot be any dispute that on and after coming into force Section 11(5) of the MMRD Act no mining leases can be granted or renewed within the Scheduled Area to any person who is not a member of Scheduled Tribe within the State of Andhra Pradesh. The only exception being as contained in the proviso, namely, an undertaking owned or con-trolled by the State or Central Government or a society registered or deemed to be registered under Andhra Pradesh Co-operative Societies Act which is composed of members of Scheduled Tribes are excluded from the rigours of Sub-section (5) of Section 11. Therefore, after 1991 if any mining lease is granted in favour of any non-Scheduled Tribe person then the said lease would be void being repugnant to Section 11(5) of the Act but the said provision does not affect the subsisting leases and, therefore, the leases in favour of the respondents cannot be said to be invalid on the ground of infraction of Section 11(5) of the MMRD Act. The provisions is prospec-tive in operation and would be applicable to any or renewal of a lease subsequent to the enactment of Section 11(5) of the MMRD Act. The leases of the respondents being prior to the aforesaid enactment these are not hit the said provisions and therefore, Dr. Dhawan's contention on this score cannot be sustained.

My conclusions on different questions, as discussed above, are summed up as under :

> 1. Under the British rule though steps had been taken to make provision for special administration of the tribal areas but there had been no prohibition for transfer of government land in favour of a non-tribal within the scheduled area.
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> 2. Under different laws and regulations operating in different tribal areas prior to coming into force of the Constitution there was restriction in relation to transfer of

lands belonging to the tribals in favour of a non-tribal within the scheduled area but no such restriction was there so far as the government land was concerned.

3. The legislative history and the debates in the Constituent Assembly culminating in engrafting of Schedule V of the Constitution conferring power on the Governor to make regulation for administration of tribal area were all aimed to prevent the tribals from exploitation of non-tribals and the prohibition/restrictions were all in relation to the transfer of lands belonging to the tribals in favour of non-tribals and it never intended to have any such prohibition in relation to government land.

4. A combined reading of Article 244 and Schedule V of the Con-stitution would indicate that there is no constitutional obligation on the Governor to make regulation prohibiting transfer of government land in favour of a non-tribal within the scheduled area.

5. The word 'person' used in Section 3(l)(a) of the Andhra Pradesh Scheduled Area Land Transfer Regulation as amended in 1970 has to be construed to convey and same meaning throughout the Section and the said expression does not include the State Government.

6. Neither the legislative history nor the object with which special power has been conferred on the Governor under Fifth Schedule to the constitution make it necessary to construe the word 'person' in the first part of Section 3(l)(a) differently from the rest part of the Section so as to include State Government within the said expression.

7. Though under Section 2 of the Forest conservation Act use of any forest land for any non-forest purpose is prohibited without the prior consent of the Central Government and as such mining activities being a non-forest purpose would attract the mischief of said Section 2 of the conservation Act, but in the absence of any materials to conclusively come to the conclusion that the land over which the respondents are carrying on the mining activities form a part of the forest land, it would not be proper for this Court to issue any direction prohibiting the mining activities. At the same time it would be proper to direct the State of Andhra Pradesh through its Forest Department to examine whether the mining activities are being carried on over the forest land and if it comes to the conclusion that the lands do form a part of the forest land then immediate steps should be taken prohibiting continuance of the mining activities until the Central Government in exercise of power under Section 2 agrees to the same, and we accordingly so direct.

8. The petitioner has not been able to make out any case of violation of the provisions of the Environment Protection Act in the case in hand.

9. Section 11(5) of the MMRD Act being prospective in nature will have no application to the existing mining leases and, therefore, the leases of the respondents' can't be

annulled on that score.

The appeals are disposed of with the aforesaid observations and directions.

C.A. No. 4603 of 1997.

PATTANAIK, J. Leave granted.

This appeal by special leave is directed against the judgment of the Andhra Pradesh High Court dated 27.8.1993 in writ petition No. 3734 of 1993. The present appellant was respondent No. 6 before the High Court SAKTI, a voluntary social organisation for the upliftment of tribals in East Godavari District filed the writ petition in the Andhra Pradesh High Court praying therein that the mining activities which are carried on by the respondents 6 to 10 in the said writ petition should be immediately stopped as the grant of mining leases in their favour is in contravention of Section 3 of the Andhra Pradesh Scheduled Areas Land, Transfer Regulation, 1959 (hereinafter referred to as the 'Regulation') as well as Section 2 of the Forest (Conservation) Act, 1980 (hereinafter referred to as the 'Conserva-tion Act'). It was averred in the writ petition that the villages where the mining activities are being carried on were notified as protected forest under Section 24 of the Andhra Pradesh Forest Act, 1967 with effect from 8.9.1975 and within the said forest area it is not permissible to continue any mining activity in view of the provisions of the Conservation Act which prohibits user of forest land for non-forest purpose.

Respondents 1 to 4 before the High Court, who were the public officers of the State Government supported the case of the petitioner and took the stand that a joint inspection report had been conducted after surveying the area over which the mining activities are being carried on by the respondents 6 to 10 and the said report reveals that mining leases have been granted over the forest area which is prohibited under the Conserva- tion Act without prior approval of the Central Government, Respondent No. 6, the present appellant took the stand that the lease having been granted much prior to the area in question was included as a protected forest, the embargo contained in the provisions of the Conser- vation Act will not apply and in this connection reliance was placed on the decision of this Court in the case of State of Bihar v. Banshi Ram, [1995] 3 SCC 643. It was also contended that Section 3 of the Regulation has no application to a transfer by the Government in respect of its land in favour of a non-tribal and the word 'person' in Section 3 of the said Regulation will not include the Government. It is not necessary for us to examine the stand taken by other private respondents, namely respondents 7 to 10. The High Court by the impugned judgment came to the conclusion that the transfer of any land in scheduled area to a non-tribal is void under Section 3 of the Regulation, and therefore, the lease in favour of respon- dent no. 6 within the scheduled area is void. The High Court came to the conclusion that the word 'person' in Section 3 of the Regulation includes the Government, and therefore, leases granted by the State Government in scheduled area to a non-tribal is void. On the question of applicability of the Conservation Act the High Court also relied upon the decision of the Court in the Banshi Ram's case (supra) and came to the conclusion that for grant of mining lease in a protected forest area for non-tribal purpose the prior approval of the Central Government is mandatory and since the Government did not obtain the approval of the Central Government, leases are in contravention of

Section 2 of the Forest Conservation Act, 1980. Having considered the judgment of this Court in Ambika Quarry Works v. State of Gujarat, [1987] 1 SCC 213 and taking into account the fact that respondent no. 6 had completed the mining operation over 42 acres the High Court permitted the said respondent no. 6 to remove the dug up mining in the presence of Joint Collector of the District, Assistant Director of Mines and Geology and the District Surveyor of Forests. Respondent No. 6, the present appellant was prohibited from mining operation in the area with the aforesaid conclusion and thus the appeal by special leave.

Learned counsel for the appellant argued with vehemence that the conclusion of the High Court that the word 'person' in Regulation 3(1)(a) includes the State Government and the transfer of any land within the scheduled area in favour of a non-tribal Ls null and void is wholly erroneous as the embargo in question is applicable in respect of transfer of land belonging to the Scheduled Castes and Scheduled Tribes and not to land belonging to the State Government. The learned counsel also urged that the restrictions and prohibitions in the Conservation Act will have no application to an existing lease and the lease in favour of the appellant having been granted much prior to the coming into force of the Conserva-tion Act, the High Court committed error in holding that the leases are in violation of the Conservation Act. Both these questions have been con-sidered in detail by us in Civil Appeal Nos. 4601-02/97 arising out of S.L.P, c Nos. 17080- 81 of 1995 and for the reasons given therein and in view of the conclusion in the said appeals to the effect that the word 'person' used in Section 3(l)

(a) of the Regulation does not include the State Govern-ment, and therefore, the prohibitions contained in the said Regulation with regard to transfer of land in favour of a non-tribal will not apply to the transfer of land made by the government for the purpose of mining lease, the conclusion of the High Court on this score is erroneous. But so far as the question of applicability of the Conservation Act is concerned, in view of our conclusion on the said question in the appeals arising out of SLPs referred to earlier (Samatha v. State of A.P. & Ors.) the conclusion of the High Court in the impugned judgment has to be sustained. In view of the inquiry report and the stand taken by the State officials the land over which the appellant was permitted to carry on mining activities is a forest land and before grant of lease in favour of the appellant no approval of the Central Government has been taken. It is no doubt true that Conservation Act came into force much later than the grant of mining lease in favour of the appellant, but in view of the general directions issued by this Court in T.N. Godavaman Thintmulkpad v. Union of India & Ors. in Writ Petition No. 202 of 1995, the mining activities being a user of the forest land for non-forest purpose has to be stopped and in case it is intended to continue the mining activities the same can be done only after referring the matter to the appropriate authority of the Central Government and getting the permission of the same. In this view of the matter the conclusion of the High Court in the impugned judgment so far as violation of Conservation Act is concerned is unexceptionable, and therefore, the said conclusion is upheld. Necessarily, therefore, the ultimate direction given by the High Court remains unaffected notwithstanding the conclusion of the High Court on the first question with regard to the applicability of the provisions of the Regulation having been reversed by us. In the premises as aforesaid this appeal is dismissed but in the circumstances there will be no order as to costs.

T.N.A. Appeals disposed of