

A BHADAR RAM (D) THR. LRs.

v.

JASSA RAM & ORS.

(Civil Appeal No. 5933 of 2021)

B JANUARY 05, 2022

[M. R. SHAH AND A.S. BOPANNA, JJ.]

- Rajasthan Tenancy Act, 1955 – s.42 – Land transaction – Legality –Land was allotted to ‘C’, the father of respondent, as a Scheduled Caste landless person – C borrowed a sum from one ‘P’ who allegedly, fraudulently, made ‘C’ to sign sale deed in favor of appellant , a resident of Punjab – ‘C’ filed suit for ejectment against ‘P’ and appellant – Trial court held that the land was in possession of ‘P’ who was not Scheduled Caste person and the sale deed was in violation of s.13 of Rajasthan Colonization Act, as well as in breach of s.42 of Rajasthan Tenancy Act, and therefore, ‘P’ was liable to be evicted – Aggrieved by the order/ decree of trial court, appellant filed appeal before Revenue Appellate Tribunal which was dismissed – Further appeal of appellant before Board of Revenue was allowed, which gave benefit of compounding to appellant on payment of compounding fees u/s.13 of the Rajasthan Colonization Act – Respondent filed writ petition which was dismissed by a Single Judge of High Court – On appeal, Division Bench set aside the judgment of Single Judge holding that appellant, being resident and a Scheduled caste belonging to Punjab, could not take benefit of his being Scheduled caste – Held: Merely because the appellant’s grandfather and father had purchased the agricultural lands in the State of Rajasthan, the appellant cannot be said to be an ordinarily resident of Rajasthan – Appellant being a Scheduled Caste belonging to State of Punjab and being an ordinarily and permanent resident of the State of Punjab cannot claim the benefit of a Scheduled Caste in the State of Rajasthan for purpose of purchase of the land belonging to a Scheduled Caste person of State of Rajasthan, which was given to original allottee as Scheduled Caste landless person and therefore sale transaction in favour of appellant was in clear breach and/or in violation of s.42 of the Rajasthan Tenancy Act – Even otherwise, in the facts and circumstances of the case, the sale transaction in favour of appellant*

can be said to be in breach of s.13 of the Rajasthan Colonization Act – Rajasthan Colonization Act, 1954 – s.13. A

Dismissing the appeal, the Court

HELD:1. Merely because the appellant's grandfather and father had purchased the agricultural lands in the State of Rajasthan, the appellant cannot be said to be an ordinarily resident of Rajasthan. As per Section 42 of the Rajasthan Tenancy Act, 1955, there is a restriction on sale, gift or bequest by a member of Scheduled Caste in favour of a person, who is not a member of Scheduled Caste. Looking to the object and purpose of such a provision, it can be said that the said provision is to protect a member of the Scheduled Caste belonging to the very State he belongs i.e., in the present case the State of Rajasthan. [Paras 6.1 and 7][404-E, G-H; 405-A]

2.1. In the case of *Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra*, the Supreme Court held that a person belonging to Scheduled Caste /Scheduled Tribe in relation to his original State of which he is permanent or an ordinarily resident cannot be deemed to be so in relation to any other State on his migration to that State for the purpose of employment, education etc. The decision of *Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another* is applicable with full force to the facts of the present case also. The submission on behalf of the appellant that the said decision shall not be applicable to the facts of the case on hand as in that case the Court was considering the issue with respect to employment, education and in the present case dispute is with respect to sale /sale of property has no substance. There is no reason to restrict the applicability of the said decision only with respect to employment, education or the like and not to make applicable the same with respect to purchase and sale of the property in case of sale and purchase of the land belonging to a Scheduled Caste person in the State of Rajasthan and when the said land was allotted to the original land owner as Scheduled Caste landless person. [Paras 7.1 and 8][406-C-F; 408-C-G]

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- A **2.2. The appellant being a Scheduled Caste belonging to State of Punjab and being an ordinarily and permanent resident of the State of Punjab cannot claim the benefit of a Scheduled Caste in the State of Rajasthan for the purpose of purchase of the land belonging to a Scheduled Caste person of State of Rajasthan, which was given to original allottee as Scheduled Caste landless person and therefore the sale transaction in favour of the appellant was in clear breach and / or in violation of s.42 of the Rajasthan Tenancy Act, 1955. [Para 10][409-E-G]**
- B **2.3. Even otherwise, in the facts and circumstances of the case, the sale transaction in favour of the appellant can be said to be in breach of s.13 of the Rajasthan Colonization Act, 1954. When the Board of Revenue granted the benefit of compounding under Section13A(2), an order of ejection of appellant was already passed against him and ‘P’, and the possession was already handed over to respondent from ‘P’, who was found to be in actual physical possession of the land on 30.12.1980. s.13(A)(2) of the Rajasthan Colonization Act, 1954 would be applicable only in a case where an order of ejectment has been passed, but a person against whom an order of ejectment has been passed has not actually been ejected from the land transferred. In that view of the matter, no order of compounding in favour of the appellant and /or even ‘P’ could have been passed by the Board of Revenue in exercise of power under s.13(A)(2) of the Rajasthan Colonization Act, 1954. [Para 11][409-G-H; 410-A-D]**
- C *Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another v. Union of India and Another, (1994) 5 SCC 244 : [1994] 1 Suppl. SCR 714 – held applicable.*
- D *Marri Chandra Shekar Rao v. Dean, Geth G.S. Medical College and Others, (1990) 3 SCC 130 : [1990] 2 SCR 843 – followed.*
- E *Ranjana Kumari v. State of Uttarakhand & Ors. [2019] 15 SCC 664 – relied on.*
- F *Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another v. Union of India and Another, (1994) 5 SCC 244 : [1994] 1 Suppl. SCR 714 – held applicable.*
- G *Marri Chandra Shekar Rao v. Dean, Geth G.S. Medical College and Others, (1990) 3 SCC 130 : [1990] 2 SCR 843 – followed.*
- H *Ranjana Kumari v. State of Uttarakhand & Ors. [2019] 15 SCC 664 – relied on.*

*Bir Singh v. Delhi Jal Board, (2018) 10 SCC 312 : A
[2018] 10 SCR 513 – referred to.*

3. The land transaction in favour of the appellant was in breach of s.13 of the Rajasthan Colonization Act, 1954 and s.42 of the Rajasthan Tenancy Act, 1955, which was rightly held to be void by the Division Bench of the High Court. [Para 12][410-E] B

Case Law Reference

[1994] 1 Suppl. SCR 714	held applicable	Para 2.3
[2019] 15 SCC 664	relied on	Para 4.1
[1990] 2 SCR 843	followed	Para 4.1 C
[2018] 10 SCR 513	referred to	Para 4.2

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5933 of 2021.

From the Judgment and Order dated 07.04.2011 of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Civil Special Appeal No.1398 of 1999. D

Ms. Suruchi Mittal, Abhishek Gautam, Advs. for the Appellants.

Ms. Christi Jain, Ms. Pratibha Jain, Advs. for the Respondents. E

The Judgment of the Court was delivered by

M. R. SHAH, J.

1 Feeling aggrieved and dissatisfied with the impugned judgment and order dated 07.04.2011 passed by the Division Bench of High Court of Judicature for Rajasthan at Jodhpur in Civil Special Appeal No.1398/ 1999 by which the Division Bench of High Court has allowed the said Appeal preferred by the respondent herein – original plaintiff, the appellant herein - original defendant – purchaser of the suit land in question has preferred the present Appeal. F

2 The facts leading to the present Appeal in nutshell are as under: G

2.1 The dispute is with respect to the land situated at village Dharamsinghwala, Tehsil Sadulshahar, District Sri Ganganagar, Rajasthan. The said land was allotted to one Chunilal as Scheduled Caste landless person and father of the respondent herein – original plaintiff. As per the case of the respondent – original plaintiff, in the year 1972, H

- A the said Chunilal borrowed a sum of Rs.5000/- from one Puran Singh and under the guise of documentation, the said Puran Singh belonging to Jat - High Caste fraudulently made Chunilal sign the sale deed in favour of the appellant herein – original defendant – Bhadar Ram, who was a resident of Punjab.
- B 2.2 The said Chunilal filed a suit for ejectment against Puran Singh and Bhadar Ram on the ground that he was the allottee of the land and the sale deed dated 21.06.1972 is void and ineffective and the same is in violation of Section 42 of the Rajasthan Tenancy Act, 1955 and Section 13 of the Rajasthan Colonization Act, 1954. The said suit came to be decreed by the learned trial Court vide judgment and decree dated 13.10.1980 holding that the land was in possession of Puran Singh who was not a Scheduled Caste person and that the sale deed is in violation of Section 13 of the Rajasthan Colonization Act, 1954 as well as in breach of Section 42 of the Rajasthan Tenancy Act, 1955 and therefore, the said Puran Singh is liable to be evicted. As per the case of the respondent
- C - original plaintiff, the possession of the land was handed over to him in pursuance of the decree passed by the learned trial Court. The possession was found to be with Puran Singh and not with Bhadar Ram. Feeling aggrieved and dissatisfied with the judgment and order /decree passed by the learned trial Court, the appellant – original defendant filed Appeal
- D before the Revenue Appellate Tribunal. The Revenue Appellate Tribunal dismissed the said Appeal. The appellant – original defendant filed the Appeal before the Board of Revenue, which came to be allowed vide order dated 25.04.1989 by giving benefit of compounding to the appellant – original defendant on payment of compounding fees under Section 13 of the Rajasthan Colonization Act, 1954.
- E F 2.3 Feeling aggrieved and dissatisfied with the order passed by the Board of Revenue, the respondent – original plaintiff filed a Writ Petition before the learned Single Judge of the High Court. The learned Single Judge of the High Court dismissed the said Writ Petition vide judgment and order dated 15.09.1999. The respondent – original plaintiff thereafter preferred Appeal before the Division Bench and by the impugned judgment and order the Division Bench of the High Court has allowed the said Appeal and has set aside the judgment and order passed by the learned Single Judge holding that the appellant herein – original defendant, being the resident and Scheduled Caste belonging to the State
- G H of Punjab, he could not have taken the benefit of his being Scheduled

Caste in the State of Rajasthan. While holding so, the Division Bench of High Court relied upon the decision of this Court in the case of *Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another Vs. Union of India and Another, (1994) 5 SCC 244.*

2.4 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court, the appellant - original defendant – purchaser of the land in question has preferred the present Appeal.

3.0 Learned Counsel appearing on behalf of the appellant – original defendant has vehemently submitted that as such all throughout the case set up by the respondent – original plaintiff was all alone that the transaction was void for absence of prior permission as required under Section 13 of the Rajasthan Colonization Act, 1954 before executing the sale between the members of Scheduled Caste and that the appellant – original defendant has been allegedly used by Puran Singh to overcome the bar imposed by Section 42 of the Rajasthan Tenancy Act. It is submitted that thus the respondent – original plaintiff admitted that the appellant – original defendant is the Member of Scheduled Caste and known in the community as such. It is submitted that since there was never a proper /formal issue framed qua the ordinary status of the appellant – original defendant for determination of caste status in relation of State of Rajasthan, adequate evidence could not be presented, though the appellant's father – forefathers are residents of Rajasthan.

3.1 It is submitted that after amendment of 1983, Section 13A has been inserted in Rajasthan Colonization Act, 1954, which permits compounding and regularization of the transaction executed without the permission as required under Section 13 of the Rajasthan Colonization Act, 1954 on deposit of compounding fees, which was correctly done by the Board of Revenue in the present case after the amendment. It is submitted that, as submitted hereinabove, the main thrust of the case of the respondent – original plaintiff until then was that the transaction was not in compliance of Section 13 of the Rajasthan Colonization Act, 1954. It is submitted that only after the decision of the Board of Revenue, the respondent – original plaintiff shifted the focus to Section 42 of the Rajasthan Tenancy Act, 1955.

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- A 3.2 It is submitted that merely because the appellant – original defendant was residing or has house at Punjab does not make him an ordinarily resident of Punjab. Reliance is placed on Section 20(1) of the Representation of People Act, 1950. It is submitted that therefore a further inquiry into that aspect is /was required before residential status is finally determined.
- B 3.3 Learned Counsel appearing on behalf of the appellant – original defendant has also relied upon the report of the Action Committee on the issue of caste certificate to Scheduled Caste and Scheduled Tribes referring to the case of *Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another (supra)*.
- C 3.4 Now so far as the reliance placed upon the decision in the case of *Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another (supra)* is concerned, it is submitted that the said judgment only discusses the status of a person in relation to a State, who has migrated to and has not anywhere discussed a situation where a person having migrated to another State was returning to his State of origin and at that time the issue of Scheduled Caste status being raised and agitated like the present case. He submitted that even the said decision also only discusses Scheduled Caste status with respect to employment /education or the like and purchase or sale of property that has not been looked into.
- D 3.5 It is submitted that the purchase of the property is out of one's own fund i.e., for lawful consideration from another and does not necessarily require State reservation or other limitation and is essentially a free act determined in open market, regulated only to the extent of its mode of execution by law and has to be looked as such. It is submitted that the appellant – original defendant therefore should not be denied benefits of land purchased from his own hard-earned money.
- E 3.6 It is submitted that even the respondent – original plaintiff cannot be permitted to question 1972 sale in 1977 after 5 years for the first time. It is submitted that this fact itself goes to show *mala fides* of the respondent – original plaintiff and abuse of process of law thereafter to deny appellant – original defendant his rightful land. It is submitted

that the consideration received has been retained all throughout by the respondent – original plaintiff and the appellant – original defendant has been depositing compounding fees in terms of Section 13A of the Rajasthan Colonization Act, 1954, and therefore, he should not be denied the benefits of his land.

Making the above submissions, it is prayed to allow the present Appeal and quash and set aside the impugned judgment and order passed by the Division Bench.

4. The present Appeal is vehemently opposed by Ms. Christi Jain, learned counsel appearing on behalf of the respondent – original plaintiff.

4.1 It is submitted that the issue whether a person, who is a member of Scheduled Caste in Punjab, where he is residing, can claim the benefit of Scheduled Caste in Rajasthan in relation to Section 42 of the Rajasthan Colonization Act, 1954 is squarely covered by the decision of this Hon'ble Court dated 01.11.2018 in *Ranjana Kumari Vs. State of Uttarakhand & Ors.* in *Civil Appeal No.8425/2013*. It is submitted that after considering two constitution Bench judgments, in the case of *Marri Chandra Shekar Rao Vs. Dean, Geth G.S. Medical College and Others, (1990) 3 SCC 130* and *Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another (supra)*, it is held that merely because in the migrant State, the same caste is recognized as Scheduled Caste, a migrant cannot be recognized as Scheduled Caste of the migrant State. It is submitted that therefore applying the law laid down by this Court and the aforesaid decisions, the Division Bench of the High Court has rightly allowed the Appeal and has rightly held that the appellant – original defendant, being the resident of State of Punjab and being a member of Scheduled Caste in State of Punjab, cannot claim benefit of Scheduled Caste in Rajasthan, and therefore, the transaction between the respondent - plaintiff and the appellant - original defendant is hit by Section 42 of the Rajasthan Tenancy Act, 1955.

4.2 It is further submitted that even the aforesaid issue is covered by another decision of this Court in the case of *Bir Singh Vs. Delhi Jal Board, (2018) 10 SCC 312* (paragraph 34). It is submitted that therefore no interference of this Court is called for in exercise of powers under Article 136 of the Constitution of India.

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- A 4.3 It is submitted that in the present case the suit was filed by the respondent - original plaintiff for ejectment and for declaring the sale deed dated 21.06.1972 as void being in violation of Section 42 of the Rajasthan Tenancy Act, 1955 and Section 13 of the Rajasthan Colonization Act, 1954. It is submitted that in the present case the land was purchased by Puran Singh a non-Scheduled Caste in the name of
- B Bhadar Ram when the respondent – original plaintiff borrowed some money from him for his medical treatment. It is submitted that therefore the same can be said to be in breach of Section 13 of the Rajasthan Colonization Act, 1954 as well as Section 42 of the Rajasthan Tenancy Act, 1955. It is further submitted that even otherwise the appellant –
- C original defendant is a resident of Punjab and not of Rajasthan. It is submitted that in the bainama, his address is shown as Village Burajwala, Tehsil, Fajilka, District Firozpur, Punjab and he is resident of Punjab. It is submitted that in the mutation record also, his address is shown as that of Punjab. In the cross examination, he has submitted that he was resident of Punjab. It was not a case set up by him that he was in fact a resident of Rajasthan and had migrated to Punjab.

- D 4.4 It is submitted that the appellant – original defendant claims to be a resident of Rajasthan only on the ground that his grandfather had land in Rajasthan. It is submitted that holding land in Rajasthan does not *ipso facto* lead to the conclusion that the person belongs to that State.
- E There is no evidence of birth of appellant – original defendant in Rajasthan. It is submitted that therefore the transaction is hit by Section 42 of the Rajasthan Tenancy Act, 1955.

- F 4.5 It is submitted that even otherwise the appellant – Bhadar Ram was in fact the benami holder for Puran Singh who was not a member of Scheduled Caste in Rajasthan. The land was found to be in possession of Puran Singh. The learned trial Court specifically observed that the possession is of Puran Singh. The learned trial Court also observed that the possession is found to be with Puran Singh when the authorities went to deliver the possession to the respondent – original plaintiff in pursuance to the order passed by the learned trial Court. It is submitted that therefore the sale deed is in violation of Section 13 of the Rajasthan Colonization Act, 1954.
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- H 4.6 It is submitted that even otherwise the Board of Revenue could not have given the benefit of compounding under Section 13 A to the appellant – original defendant. It is submitted that the benefit of

compounding can only be given if the transferee was in possession. In the present case, the transferee – appellant was not in possession, and therefore, the benefit of compounding could not have been given to the appellant – original defendant. The permission of compounding can only be given by the State Government and not the Board of Revenue. It is submitted that even otherwise the provisions under Section 13A could have been exercised up to 13.06.1987 whereas Board has exercised it on 25.04.1989, which is beyond the time limit.

Making the above submissions and relying upon the above decisions, it is prayed to dismiss the present Appeal.

5. Heard learned Counsel appearing on behalf of the respective parties at length. The short question, which is posed for the consideration of this Court is, Whether the land transaction in favour of the appellant - original defendant was illegal and in violation of Section 42 of the Rajasthan Tenancy Act, 1955 and Section 13 of the Rajasthan Colonization Act, 1954 being a person belonging to Scheduled Caste of State of Punjab?

6. It is not in dispute that the land in question is situated within the State of Rajasthan. The land in question was allotted to one Chunilal – father of the respondent – original plaintiff, being a Scheduled Caste landless person. According to the respondent – original plaintiff, the said Chunilal borrowed a sum of Rs.5000/- from one Puran Singh (Jat - High Caste) and under the guise of documentation, the said Puran Singh fraudulently made Chunilal to sign a sale deed in favour of the appellant herein – Bhadar Ram, a resident of Punjab. Thus, according to the respondent – original plaintiff, in effect the sale was in favour of the said Puran Singh. However, the said Puran Singh got the sale deed executed in favour of the appellant herein – Bhadar Ram, being a person belonging to Scheduled Caste (Scheduled Caste in Punjab). According to the respondent – original plaintiff, all throughout, the land was in possession of the said Puran Singh, who was not a Scheduled Caste person and even after the judgment and decree passed by the learned trial Court when the possession was handed over to the respondent – original plaintiff, the possession was found to be with Puran Singh and not with the appellant - original defendant, and therefore, it was the case on behalf of the respondent – original plaintiff that the sale transaction in favor of Bhadar Ram was in violation of Section 13 of the Rajasthan Colonization Act, 1954. It was also the case on behalf of the respondent – original plaintiff that the sale transaction was also in violation of Section 42 of the Rajasthan

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- A Tenancy Act, 1955 in as much as the appellant – Bhadar Ram was belonging to Scheduled Caste in the State of Punjab and he was the permanent resident of State of Punjab. However, it was the case on behalf of the appellant - original defendant that he being a person belonging to Scheduled Caste, the sale deed in his favour cannot be said to be in breach of Section 42 of the Rajasthan Tenancy Act, 1955. It was also the case on behalf of the appellant - original defendant that he has migrated to Rajasthan and as his grandfather and father had purchased the agricultural lands in the State of Rajasthan, and therefore, he can be said to be the permanent resident of State of Rajasthan.
- B 6.1 Whether the appellant herein – original defendant – purchaser of the land in question, situated in the State of Rajasthan, can be said to be an ordinarily resident of State of Rajasthan, it is to be noted that in bainama, his address is shown as Village Burajwala, Tehsil Fajilka, District Firozpur, Punjab. In the mutation record also, his address is shown as that of Punjab. In the cross examination, he has admitted that he was a resident of Punjab. However, according to the appellant – original plaintiff, as his grandfather and father had purchased the lands in the State of Rajasthan, he can be said to be an ordinarily resident of State of Rajasthan. The aforesaid cannot be accepted. Merely because his grandfather and father had purchased the agricultural lands in the State of Rajasthan, the appellant cannot be said to be an ordinarily resident of Rajasthan.
- C ‘**Ordinarily Resident**’ has been defined under the **Representation of the People Act, 1950**. As per Section 20(1) of the Representation of the People Act, 1950, ‘ordinarily resident’ means a person shall not be deemed to be ordinarily resident in a constituency on the ground only that he owns, or is in possession of, a dwelling house therein. Considering the documentary evidences referred to hereinabove, it cannot be said that the appellant – original defendant is an ordinarily / permanent resident of State of Rajasthan.
- D 7. Now whether the sale transaction in favour of the appellant - original defendant can be said to be in violation of Section 42 of the Rajasthan Tenancy Act, 1955 is concerned, it is to be noted that as per Section 42 of the Rajasthan Tenancy Act, 1955, there is a restriction on sale, gift or bequest by a member of Scheduled Caste in favour of a person, who is not a member of Scheduled Caste. Looking to the object and purpose of such a provision, it can be said that the said provision is
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to protect a member of the Scheduled Caste belonging to the very State he belongs i.e., in the present case the State of Rajasthan. Being a Scheduled Caste in the State of Punjab whether the sale transaction in favour of the appellant - original defendant could have been saved from the bar under Section 42 of the Rajasthan Tenancy Act, 1955 is now not *res integra*. In the case of **Marri Chandra Shekar Rao (supra)** in paragraph 10 it is observed and held as under:

“10. It has, however, to be borne in mind that a man does not cease to belong to his caste by migration to a better or more socially free and liberal atmosphere. But if sufficiently long time is spent in socially advanced area then the inhibitions and handicaps suffered by belonging to a socially disadvantaged community do not continue and the natural talent of a man or a woman or a boy or girl gets full scope to flourish. These, however, are problems of social adjustment i.e how far protection has to be given to a certain segment of socially disadvantaged community and for how long to become equal with others is a matter of delicate social adjustment. These must be so balanced in the mosaic of the country’s integrity that no section or community should cause detriment or discontentment to other community or part of community or section. Scheduled Castes and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the extent they are entitled in order to become equal with others. But equally those who go to other areas should also ensure that they make way for the disadvantaged and disabled of that part of the community who suffer from disabilities in those areas. In other words, Scheduled Castes and Scheduled Tribes say of Andhra Pradesh do require necessary protection as balanced between other communities. But equally the Scheduled Castes and Scheduled Tribes say of Maharashtra, in the instant case, do require protection in the State of Maharashtra, which will have to be in balance to other communities. This must be the basic approach to the problem. If one bears this basic approach in mind, then the determination of the controversy in the instant case does not become difficult.”

While holding so, it is observed in the aforesaid decision that the Scheduled Castes and Scheduled Tribes in some States had to suffer the social disadvantages and did not have the facilities for development and

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- A growth, and therefore, in order to make them equal in those areas where they have so suffered and are in the state of underdevelopment, to have reservations or protection in their favour so that they can compete on equal terms with the more advantageous or developed sections of the community, a particular caste who has suffered more in a particular State might be given reservations or protection in their favour. It is also observed that social condition of a State varies from State to State and it will not be proper to generalize any Caste or any Tribe as a Scheduled Caste or Scheduled Tribe for the whole country.

- 7.1 In the case of *Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another (supra)* after considering the decision of this Court in the case of *Marri Chandra Shekar Rao (supra)* the question arose, Whether a person belonging to caste or tribe specified for the purpose of Constitution to be Scheduled Caste or a Scheduled Tribe in relation to State A migrates to State B, where a caste or tribe with the same nomenclature is specified for the purposes of Constitution to be a Scheduled Caste or Scheduled Tribe in relation to that State B, will that person be entitled to claim the privileges and benefits admissible to persons belonging to Scheduled Caste and /or Scheduled Tribe in State B? Holding that a person belonging to Scheduled Caste /Scheduled Tribe in relation to his original State of which he is permanent or an ordinarily resident cannot be deemed to be so in relation to any other State on his migration to that State for the purpose of employment, education etc. In paragraph Nos.3 and 16 it is observed and held as under:
- F “3. On a plain reading of clause (1) of Articles 341 and 342 it is manifest that the power of the President is limited to specifying the castes or tribes which shall, for the purposes of the Constitution, be deemed to be Scheduled Castes or Scheduled Tribes in relation to a State or a Union Territory, as the case may be. Once a notification is issued under clause (1) of Articles 341 and 342 of the Constitution, Parliament can by law include in or exclude from the list of Scheduled Castes or Scheduled Tribes, specified in the notification, any caste or tribe but save for that limited purpose the notification issued under clause (1), shall not be varied by any subsequent notification. What is important to notice is that the castes or tribes have to be specified in relation to a given State or
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Union Territory. That means a given caste or tribe can be a Scheduled Caste or a Scheduled Tribe in relation to the State or Union Territory for which it is specified. These are the relevant provisions with which we shall be concerned while dealing with the grievance made in this petition.”

“16. We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/ Schedule Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State “for the purposes of this Constitution”. This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution. That is why in answer to a question by Mr Jaipal Singh, Dr Ambedkar answered as under:

“He asked me another question and it was this. Supposing a member of a Scheduled Tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local Government, within whose jurisdiction he may be residing the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution.

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- A But so far as the present Constitution stands, a member of a Scheduled Tribe going outside the scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practicably impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them.....”
- B Relying on this statement the Constitution Bench ruled that the petitioner was not entitled to admission to the medical college on the basis that he belonged to a Scheduled Tribe in the State of his origin.”

- C 8. The decision of this Court in the case of Action *Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another (supra)* shall be applicable with full force to the facts of the present case also. The submission on behalf of the appellant - original defendant that the said decision shall not be applicable to the facts of the case on hand as in that case the Court was considering the issue with respect to employment, education and in the present case dispute is with respect to sale /sale of property has no substance and cannot be accepted. The reasoning given by this Court in the case of *Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another (supra)* are on interpretation and on a plain reading of Clause I of Articles 341 and 342 of the Constitution of India, which are referred to hereinabove. We see no reason to restrict the applicability of the decision of this Court in the case of *Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another (supra)* only with respect to employment, education or the like and not to make applicable the same with respect to purchase and sale of the property in case of sale and purchase of the land belonging to a Scheduled Caste person in the State of Rajasthan and when the said land was allotted to the original land owner – Chunilal as Scheduled Caste landless person.
- D 9. At this stage, it is required to be noted that in the subsequent decision in the case of *Ranjana Kumari (supra)*, a Three Judge Bench of this Court had an occasion to consider the same issue. Before this Court the appellant belonged to Valmiki Caste (Scheduled Caste of the
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State of Punjab), who married a person belonging to Valmiki Caste of Uttarakhand migrated to that State. It was found that in the State of Uttarakhand also under the Presidential order ‘Valmiki’ was also recognized as notified Scheduled Caste. Even the State of Uttarakhand also issued a certificate to the appellant. However, the State of Uttarakhand denied the benefit, which may be available to the Scheduled Caste belonging to State of Uttarakhand. Thereafter the appellant approached the High Court. The High Court rejected the claim. The decision of the High Court was carried before this Court. While dismissing the Appeal, it is observed in paragraph 4 as under:

“4. Two Constitution Bench judgments of this Court in *Marri Chandra Shekar Rao Vs. Dean, Seth G.S. Medical College & Ors.* and *Action Committee on Issue of Caste Certificate to Scheduled Castes & Scheduled Tribes in the State of Maharashtra & Anr. Vs. Union of India & Anr.* have taken the view that merely because in the migrant State the same caste is recognized as Scheduled Caste, the migrant cannot be recognized as Scheduled Caste of the migrant State. The issuance of a caste certificate by the State of Uttarakhand, as in the present case, cannot dilute the rigours of the Constitution Bench Judgments in *Marri Chandra Shekar Rao (supra)* and *Action Committee (supra).*”

10. In view of the above, the appellant – original defendant being a Scheduled Caste belonging to State of Punjab and being an ordinarily and permanent resident of the State of Punjab cannot claim the benefit of a Scheduled Caste in the State of Rajasthan for the purpose of purchase of the land belonging to a Scheduled Caste person of State of Rajasthan, which was given to original allottee as Scheduled Caste landless person, and therefore, as rightly held by the Division Bench of the High Court, the sale transaction in favour of the appellant – original defendant was in clear breach and / or in violation of Section 42 of the Rajasthan Tenancy Act, 1955.

11. Even otherwise, in the facts and circumstances of the case, the sale transaction in favour of the appellant - original defendant can be said to be in breach of Section 13 of the Rajasthan Colonization Act, 1954. It is required to be noted that the Board of Revenue granted the benefit of provisions of Section 13A of the Rajasthan Colonization Act, 1954 in favour of the appellant - original defendant and the Board

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- A permitted the appellant - original defendant to pay compounding fees and regularized the transaction. However, it is required to be noted that when the Board of Revenue granted the benefit of compounding under Section 13A(2), an order of ejection of the appellant - original defendant was already passed against him and Puran Singh, and the possession was already handed over to the respondent – original plaintiff from Puran Singh, who was found to be in actual physical possession of the land on 30.12.1980. Section 13(A)(2) of the Rajasthan Colonization Act, 1954 would be applicable only in a case where an order of ejection has been passed, but a person against whom an order of ejection has been passed has not actually been ejected from the land transferred. In that view of the matter, no order of compounding in favour of the appellant - original defendant and /or even Puran Singh could have been passed by the Board of Revenue in exercise of power under Section 13(A)(2) of the Rajasthan Colonization Act, 1954, and therefore, also the order passed by the Board of Revenue confirmed by the learned Single Judge permitting compounding was contrary to Section 13A(2) of the Rajasthan Colonization Act, 1954, and therefore, also the land transaction in question is hit by Section 13 of the Rajasthan Colonization Act, 1954.

- 12. In view of the above and for the reasons stated hereinabove, the land transaction in favour of the appellant - original defendant was in breach of Section 13 of the Rajasthan Colonization Act, 1954 and Section 42 of the Rajasthan Tenancy Act, 1955, which is rightly held to be void by the Division Bench of the High Court. We are in complete agreement with the view taken by the Division Bench. Under the circumstances, the present Appeal fails and the same deserves to be dismissed and is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

Bibhuti Bhushan Bose

Appeal dismissed.