Supreme Court of India
Lingappa Pochanna Appelwar And ... vs State Of Maharashtra And Anr. Etc on 4 December, 1984
Equivalent citations: 1985 AIR 389, 1985 SCR (2) 224
Author: A Sen
Bench: Sen, A.P. (J)

PETITIONER:
LINGAPPA POCHANNA APPELWAR AND ORS.

Vs.

RESPONDENT:
STATE OF MAHARASHTRA AND ANR. ETC.

DATE OF JUDGMENT04/12/1984

BENCH:
SEN, A.P. (J)
BENCH:
SEN, A.P. (J)
REDDY, O. CHINNAPPA (J)
VENKATARAMIAH, E.S. (J)

CITATION:
1985 AIR 389 1985 SCR (2) 224
1985 SCC (1) 479 1984 SCALE (2)1022
CITATOR INFO :
RF 1986 SC1571 (83)
D 1988 SC1626 (15)
R 1992 SC 195 (6A)

ACT:
Constitution of India 1950, Articles 14, 19 (1) (f ), 31, 46 and Entry 18 List II Seventh Schedule: Maharashtra Restoration of Lands to Scheduled Tribes Act 1974, Sections 2 (1) (i), 3, 4 and 9A & Advocates Act 1961, Section 30. State enactment providing for annulment of transfers of agricultural lands by tribals to non-tribals and for restoration of possession-State legislature-Competency to enact-Enactment whether valid and constitutional-Prescribing a date for annulment of transfers-Whether arbitrary and void-Bar on advocates appearing in proceedings under the Act-Whether valid and reasonable.

Statutory Interpretation-Distributive justice-what is-Law to be used as instrument of distributive justice-Emphasised.

HEADNOTE:
Legislation was undertaken by different States placing restrictions on transfer of lands by members of Scheduled

Castes and Tribes in pursuance of the declared policy of the State of safeguarding, protecting and improving the conditions of weaker sections of the society by providing that any such transfer except in terms of the provisions of the different Acts shall be null and void.

The State Government of Maharashtra by a Government Resolution appointed a Committee to inquire into and report on how far the provisions of the Maharashtra Land Revenue Code, 1966, the Bombay Tenancy & Agricultural Lands (Vidharbha Region) Act, 1958 the Hyderabad Tenancy and Agricultural Lands Act, 1950 and the Bombay Tenancy and Agricultural Lands Act, 1948 had been effective in giving protection to persons belonging to Scheduled Tribes and to suggest suitable amendments, if any of the existing provisions were found to be inadequate. The Committee submitted its Report, and pointed out that inspite of section 36 (2) Maharashtra Land Revenue Code 1966, and analogous provisions in the earlier Land Revenue Laws, these were not found sufficient, and persons belonging to the Scheduled Tribes because of their poverty, lack of education and general backwardness had been exploited by various persons and deprived of their lands, and recommended that pro. vision should be made for restoring to persons belonging to Scheduled Tribes the lands which had been duly transferred to other persons. After considering the aforesaid recommendation, the State Government of Maharashtra enacted

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the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974. This Act was included in the Ninth Schedule of the Constitution.

The Appellant purchased agricultural lands from the father of Respondent No. 2 by a registered sale deed with the prior permission of the Collector as required by Section 47 of the Hyderabad Tenancy and Agricultural Lands Act. 1950 and was placed in possession thereof. The Sub-Divisional Officer finding that the vendor was a gond, and a tribal within the meaning of section 2 (1) (j) of the Act initiated suo motu proceedings under section 3 (1) of the Act for restoration of the lands to respondent No. 2, and after enquiry finding that respondent No. 2 had given an undertaking in form III that he required the land for his personal cultivation and was willing to deposit the amount fixed by him for payment of the appellant, directed under section 3 (1) (ii) of the Act that possession should be restored to respondent No 2.

The appellant preferred an appeal under section 6 to the Land Revenue Tribunal, which upheld the order passed by the Sub-Divisional Officer. The Writ Petition of the appellant, was dismissed in limine and this order was confirmed by a Division Bench of the High Court.

In the Appeals to this Court, it was contended on behalf of the appellants: (1) that sections 3 (1) and 4 of

the Act which provide for annulment of transfers of land by tribals to non-tribals effected during the period from April 1, 1957 to July 6, 1974 and for restoration of possession to them was beyond the legislative competence of the State under Entry 18 in List 2 of the Seventh Schedule, (2) sections 3 (1) and 4 are inconsistent with, take away and abridge the fundamental rights conferred by Articles 14, 19 (1) (f) and 31, (3) The adoption of the date April 1, 1957 as the date from which there was to be an annulment of transfer under sections 3 (1) and 4 was arbitrary and void as contravening Article 14, (4) The Act was violative of Article 14 because it treats equals unequally: in that members of Scheduled Castes who also constitute the weaker section of the society have been discriminated against and there was preferential treatment afforded to non-tribal transferees who had diverted the lands purchased by them to non-agricultural purposes. (5) The definition of non-tribal transferee contained in section 2 (1) (i) offends Article 14 as it permitted an assignee of non-tribal transferee effected prior to March 15, 1971 to escape the consequence of annulment under section 3 (1) and 4, (6) Sections 9A was constitutionally void as it affected the fundamental right of an advocate enrolled by the State Bar Council to carry on his profession guaranteed by Article 19 (1) (g), and the right of the appellants who are non-tribals by being prevented to be represented by a legal practitioner of their choice.

Dismissing the Appeals.

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HELD: I (i) our Constitution permits and even directs the State to administer what may b- termed 'distributive justice'. The concept of distributive justice in the sphere of law-making conntes, the removal of economic inequalities and rectifying the injustice resulting from dealings or transactions between

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unequals in society. Law should be used as an instrument of distributive justice to A achieve a fair division of wealth among the members of society based upon the principle: 'From each according to his capacity, to each according to his needs'. Distributive justice comprehends more than achieving, lessening of inequalities by differential taxation, giving debt relief or distribution of property owned by one to many who have none by imposing ceiling on holdings, both agricultural and urban, or by direct regulation of contractual transactions by forbidding certain transactions and, perhaps, by requiring others. l239F-H; 240A]

(ii) The present legislation is a typical illustration of the concept of distributive justice. It is nothing but a remedial measure in keeping with the policy of the State for rendering social and economic justice to the weaker sections of the society. It is intended and meant as an instrument

for alleviating opperession, redressing bargaining imbalance, cancelling unfair advantages, and generally overseeing and ensuring probity and fair dealings.'[239E; 241E; 242C]

It seeks to reopen transaction between parties having unequal bargaining power resulting in transfer of title from own to another due to force of circumstances and also seeks to restitute the parties to their original position. [242C]

Manchegowda & Ors. v. State of Karnataka & ors. [l984] 3 SCC 30I, Fateh Chand Himmatlal v. State of Maharashtra [1977] 2 SCR 828 & Pathumma ate of Kerela [1978] 2 S.C.R. 537, referred to.

2 (i) The Act strikes at transactions relating to agricultural lands effected between members of Scheduled Tribes who admittedly belong to the weaker sections of the society and persons not belonging to Scheduled Tribes. Experience in the past showed that members of the Scheduled Tribes had been exploited due to their ignorance and poverty by members belonging to the affluent and powerful sections of the society to obtain transfer of their lands by way of sale, gift, mortagage, exchange etc. for a nominal consideration or for no consideration at all rendering them practically landless. The Sub Divisional Officers and Collectors due to their multifarious duties accorded sanction to such transfers without application of mind to the prevalent circumstances. The Committee appointed by the State Government pointed out in its Report that the provisions of the Maharashtra Land Revenue Code 1966 and the relevant tenancy Laws that were in existence had not been effective in giving protection to persons belonging to the Scheduled Tribes and recommended that provisions should be made for restoring to members of Scheduled Tribes the lands which had been duly transferred by them to other persons. The Legislature therefore stepped in and reopened such transactions by directing that lands be restored to the tribal transferers free from all encumbrances on payment by them to the non-tribal transferees the amounts determined by the Collector under Sub-section (4) of s. 3. [246E-H: 247A-C]

(ii) The restoration of possession by sections 3 (1) and 4 does not involve any deprivation of the property in the sense that there is unsettling of title without consideration. It makes detailed provisions setting out the conditions subject to which a transfer by a tribal of his agricultural lands to a non-tribal
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may be nullified and possession restored. The object of the legislation is restitution of the property to the persons to whom the lands originally belonged, A subject to the adjustment of equities between the parties. [247D-F]

(iii) The Act in its true nature and character is a law relating to transfers and alienations of agricultural lands

by members of Scheduled Tribes in the State to persons not belonging to Scheduled Tribes. Such a law does not fall within Entries 6 and 7 in List III but is within Entry 18 in List II. 1217G] R

(iv) The words 'other than agricultural land' in Entry 6 and the words 'but not including contracts relating to agricultural land in Entry 7 in List III have the effect of delimiting the legislative power of the union to make a law with respect to contracts in relation thereto. The power of the State Legislature to make a law with respect to transfer and alienation of agricultural land under Entry 18 in list II carries with it not only a power to make a law placing restrictions on transfers and alienations of such lands including a prohibition thereof, but also the power to make a law to reopen such transfers and alienations. Such a law relatable to Entry 18 in list II of the Seventh Schedule was clearly within the legislative competence of the State Legislature. [248B-D]

3. The Act having been placed in the Ninth Schedule of the Constitution the submission that sections 3(1) and 4 are inconsistent with, or take away or abridge any of the fundamental rights conferred by Art. 14, Art. l9(1)(f) or Art. 31 of the Constitution must be rejected at the very threshold because it is protected under Art. 31B. [248F]

4. (i) It is permissible for the legislature to make a classification on the basis of time for a law to operate. What is necessary is that there must be a reasonable nexus between the basis of classification as to time and the object sought to be achieved. [248H]

(ii) The Act adopts April 1,1957 for nullification of transfers made by tribals to non-tribals under sections 3(1) and 4 because that was the 'tillers' day. for purposes of the Bombay Tenancy & Agricultural Lands Act, 1948, on the basis of which the non-tribal transferees could apply to the Tenancy Court for purchase of their holdings on the ground that they were in cultivating position thereof. There was therefore reasonable nexus for the fixation of such date and the object sought to be achieved and the impugned Act is not violative of Art. 14. [249A-B]

5. (i) The appellants who were transferees from members of scheduled Tribes cannot possibly plead the cause of members of Scheduled Castes Members of Scheduled Tribes i.e. tribals who are mostly aboriginals constitute a distinct class who need a special protection of the State. [249E]

(ii) There is no question of any differential treatment between two classes of persons equally situate when a part of the land is diverted to a nonagricultural purpose viz. the construction of a dwelling house or the setting up of an industry, the State legislature obviously could not have made a law for annulment of transfer of such lands by tribals under Entry 18 in List II as

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the lands having been diverted to non-agricultural purposes

ceased to be A agricultural lands. In the case of such non-agricultural land, if the State Legislature made such a law it would not be effective unless it was reserved for the assent of the President and received such assent. [249G-H; 250A]

6. The expression 'non-tribal transferee' as defined in section 2 (1) (i) is an inclusive one. It is not correct to say that it permits an assignee of a non-tribal transferee effected prior to March 15,1971 to escape the consequences of annulment under sections 3(1) and 4 of the Act. The Legislature appointed March IS, 1971 with a view to give retrospective effect to the provisions of Sections 3(1) and 4 of the Act as that was the dale on which the Government constituted the Committee to inquire into and report to the State Government on how far the provisions of the Maharashtra Land Revenue Code, 1966 and the relevant tenancy laws had been effective in giving protection to persons belonging to Scheduled Tribes. The provisos to sections 3(1) and 4 are meant to mitigate the hardship which otherwise would because to a non-tribal transferee who would again be rendered landless if he were required to restore the entire land under sections 3(1) and 4 of the Act. [250B-D;; G]

7. (i) A person enrolled as an advocate under the Advocate's Act, 1961 is not ipso facto entitled to a right of audience in all Courts unless section 30 of the Advocates Act, 1961 is first brought into force. The right of an Advocate brought on the rolls to practice is, just what is conferred on him by sections 14(1)(a), (b) and (c) of the Bar Councils Act 1926. Section 9A is not therefore an unconstitutional restriction on advocate's right to practice their profession. [251G-H; 252A]

(ii) Apart from the provisions of Art. 22(1) of the Constitution, by which an accused who is arrested and detained in custody is entitled to consult and be defended by a legal practitioner of his choice, no litigant has a fundamental right to be represented by a lawyer in any Court, In all other matters i.e. in suits or other proceedings in which the accused is not arrested and detained on a criminal charge, the litigant has no fundamental right to be represented by a legal practitioner . [252B-C]

(iii) The legislature felt that for implementation of the legislation. it would not subserve the public interest if lawyers were allowed to appear, plead or act on behalf of the non-tribal transferees. A tribal and a non-tribal are unequally placed and non-tribal transferee being a person belonging to the more affluent class, would unnecessarily protract the proceedings before the Collector under sections 3(1) and 4 by raising all kinds of pleas calculated to delay or defeat the right of the tribal for restoration of his lands. The proceedings be. fore the Collector have to be completed with sufficient despatch and the transferred lands restored to a tribal without any of the law's delays. [252D-

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JUDGMENT:

CIVIL, APPELLATE JURISDICTION : Civil Appeal No. 4384 of 1984.

From the Judgment and order dated 27.6.84 of the Bombay High Court in L.P.A No. 147 of 84 in W.P. No. 1624 of 1977.

AND Civil appeal No. 3288 of 1984.

(From the judgment & order dated 21.6.84 of the Bombay High Court in L.P.A. No. 135 of 1984.) V.B. Joshi for the appellant in both the appeals. V.S. Desai and M.N. Shroff for the respondents in both the appeals.

The Judgment of the Court was delivered by B SEN, J. These two appeals by special leave are directed against the judgments and orders of a Division Bench of the Nagpur Bench of the Bombay High Court dated June 21 and 27, 1984 and raise a common question relating to the constitutional validity of ss 3 and 4 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974. The question is whether ss.3 and 4 of the impugned Act which provided for annulment of transfers made by members of Scheduled Tribes and for restoration of lands to them on certain conditions were ultra vires the State Legislature as being beyond the purview of Entry 18 of List II of the Seventh Schedule or were otherwise violative of Art. 14, Art. 19(1)(f) and Art. 31 of the Constitution.

Facts in these two appeals are more or less similar. In Civil Appeal No. 4384 of 1984, the appellant Lingappa Pochanna Appelwar had by a registered sale-deed dated November 30, 1965 purchased agricultural land bearing Survey No. 27 having an area of 20 acres 39 gunthas from Raju Meshram, father of respondent No. 2 Sonerao Raju Meyhram who being a gond was a tribal within the meaning of s.2(1)(j) of the Act for a consideration of Rs. 1300 with the prior permission of the Collector as required by s.47 of the Hyderabad Tenancy & Agricultural Lands Act, 1950 and was placed in possession thereof. Suo motu proceedings were started by the Sub-Divisional Officer, Rajura in District Chandrapur under s.3(1) of the Act for restoration of the lands to respondent No. 2. The Sub-Divisional officer initiated an inquiry, summoned the parties and recorded their statements. By his order dated February 19, 1977 he held that it was admitted by the appellant that his transferor Raju Meshram was a gond and therefore a tribal under s.2(1)(j) of the Act, that no improvements had been made by him on the land and that there were no encumbrances thereon. He therefore held that the case falls within s.3(1) of the Act and recorded that respondent No. 2 Sonerao Raju Meshram, the tribal, had given an undertaking in Form Ill that he required the land for his personal cultivation and was willing to deposit the amount fixed by him for payment to the appellant. He accordingly directed in exercise of the powers vested in him under s.3(1)(ii) of the Act that possession of an area of 19 acres 19 gunthas out of Survey No. 27 be taken from the appellant and restored to respondent No. 2 on payment of Rs. 461.76p. towards the consideration equal to 48 times of the assessment as required by s.3(4)(b) after setting apart a part of the remaining portion of

1 acre 20 gunthas covered by a dwelling house. The appellant preferred an appeal under s.6 of the Act to the Maharashtra Land Revenue Tribunal, Nagpur but a Single Member of the Tribunal by his order dated August 5, 1977 upheld the order passed by the Sub-Divisional officer. The appellant than filed a writ petition before the Nagpur Bench of the Bombay High Court assailing the orders of the Maharashtra Land Revenue Tribunal as well as that of the Sub-Divisional officer. A learned Single Judge by his order dated March 13, 1984 dismissed the writ petition in limine and a Letters Patent Appeal preferred by the appellant was also dismissed by a Division Bench by its order dated June 27, 1984. Facts in Civil Appeal No. 3288 of 1984 are more or less similar. We must here mention that the High Court in Sadashiv Ragho Kolambe & ors. v. State of Maharashtra & Anr. being Special Civil Application No. 1064/76 decided on June 20, 1976 upheld the constitutional validity of the Act and Civil Appeal No. 982/76 is pending before this Court.

The impugned Act is supplemental or incidental to the Maharashtra Land Revenue Code, 1966 and the relevant tenancy laws viz. the Bombay Tenancy & Agricultural Lands (Vidarbha Region) Act, 1958 in relation to the Vidarbha region of the State, the Hyderabad Tenancy & Agricultural Lands Act, 1950 in relation to the Hyderabad region of the State and the Bombay Tenancy & Agricultural Lands Act, 1948 in relation to the rest of the State. Similar measures have been undertaken by different States placing restrictions on transfer of lands by members of Scheduled Castes and Tribes for the implementation of the Directive Principles of States Policy enshrined in Art. 46 of the Constitution which enjoins that "the State shall promote with special care the educational and economic interests of the weaker sections of the people and in particular of the Scheduled Castes and Tribes and shall protect them from social injustice and all forms of exploitation"

Although there is legislation undertaken by different States placing restrictions on transfer of lands by members of Scheduled Castes and Tribes in pursuance of the declared policy of the State of safeguarding, protecting and improving the conditions or weaker sections of the society by providing that any such transfer except in terms of the provisions of the different Acts shall be null and void, the State of Maharashtra has gone a step further for annulment of such transfers by members of Scheduled Tribes and for restoration of lands to them by enacting the Maharashtra Restroration of Lands to Scheduled Tribes Act, 1974. The impugned Act has been placed in the Ninth Schedule of the Constitution and is thereof immune under Art. 31B from any challenge on the ground that it is inconsistent with, or takes away, or abridges any of the rights conferred by Art. 14, Art 19 or Art. 31 of the Constitution.

Before dealing with the contention raised, it would be convenient to deal with the legislative history. By a Government Resolution in the Revenue & Forest Department, the State Government appointed a Committee to inquire into and report the State Government inter alia on how for the provisions of the Maharashtra Land Revenue Code, 1966 and the relevant tenancy law had been effective in giving protection to persons belonging to Scheduled Tribes and to suggest among other things suitable amendments therein if any of the existing provisions were found to be inadequate. The said Committee by its Report to the Government dated April 7, 1972 drew the attention of the State Government to the difficulties experienced in the administration of the provision contained in s 73 of the Bombay Land Revenue Code, 1897 (in Western Maharashtra) and the analogous provisions in the Madhya Pradesh Land Revenue Code, 1954 (in Vidarbha) and the Hyderabad Land Revenue Act,

1317F (in Marathawada) which are now replaced by s.36 of the Maharashtra Land Revenue Code, 1966. According to sub-s.(2) of s.36, occupancies of persons belonging to such Scheduled Tribes as had been notified by Government, and in the parts of the State notified by Government, could not be transferred except with the previous sanction of the Collector. The intention of the Legislature in making this provision was that this weaker section of the community should not become landless and that persons belonging to the amount and powerful sections should not be allowed to take undue advantage of the situation. However, inspite of this provision and provisions of the earlier Land Revenue laws, these were not found sufficient and persons belonging to the Scheduled Tribes because of their poverty, lack of education and general backwardness had been exploited by various persons who could take advantage of the sad plight of these poor persons depriving them of their lands. The said Committee accordingly recommended inter alia that provision should be made for restoring to persons belonging to Scheduled Tribes the lands which had been duly transferred to other persons. After considering the aforesaid recommendation of the said Committee, the State Government were of the opinion that steps should be taken forthwith for restoring certain lands to persons belonging to Scheduled Tribes.

Broadly stated, such illegal transfers fell into two categories, namely: (1) occupancy holdings had been transferred to persons not belonging to Scheduled Tribes by the Collector or the Sub Divisional officer on the ground that occupancy holdings were allowed to be transferred to persons not belonging to Scheduled Tribes. This was in clear violation of the provisions of s. 3 (2) of the Maharashtra Land Revenue Code. (2) The lands were first allowed to be leased out to persons not belonging to Scheduled Tribes by the Collector or the Sub-Divisional officer on the ground that members of the Scheduled Tribes holding such lands were unable to cultivate them personally due to sickness or otherwise. Later on, taking advantage of the provisions of the Bombay Tenancy & Agricultural Lands Act, 1948, such transferees applied to the Tenancy Courts for purchase of the holdings on the ground that they were in cultivating possession on April 1, 1957 i.e. On "the tillers' day" The Committee accordingly recommended that necessary legislation be undertaken for restoration of lands to such Scheduled Tribes which had been transferred whether by way of sale, gift, mortgage or any other disposition made or had gone into the possession of members not belonging to Scheduled Tribes under a decree or order of a Court on or after April 1, 1957. It would therefore appear from the Report that the provisions contained in the relevant Land Revenue laws were not found sufficient to help the members of the Scheduled Tribes whose ignorance and poverty had been exploited by persons belonging to the affluent and powerful sections to obtain sales or mortgages either for a nominal consideration or for no consideration at all and they had become the victims of circumstances.

The Statement of objects and Reasons accompanying the Bill is as follows:

> "It was noticed that in a number of cases lands previously held by persons belonging to Scheduled Tribes have A been transferred to non-Tribals as a result of purchases made or deemed to have been made under the Tenancy Laws or as a result of transfers (including exchanges) validly effected after 1st April, 1957 under the provisions of the Maharashtra Land Revenue Code, 1966 or other laws in force in the State. After examining the recommendation of the Committee appointed by

> Government to examine the difficulties experienced by the Tribal land. holders in the administration of certain provisions of the Maharashtra Land Revenue Code and other laws in force in the State it is considered necessary to provide for restoration of the lands which have gone into the hands of non Tribals to their original Tribal owners. The bill seeks to achieve this object".

We have referred to the Statement of objects and Reasons and the Report of the Committee not as an aid to construction but for the limited purpose of ascertaining the conditions prevailing at the time the Bill was introduced and the object sought to be achieved.

Various contentions were raised but before we deal with them, it is necessary to refer to certain provisions of the Act. S. 2 (1) of the Act is the definition clause. The word 'transfer' in relation to land is defined in s. 2 (1) (i) to mean the transfer of land belonging to a tribal made in favour of a non-tribal during the period commencing on the 1st day of April 1957 and ending on the 6th day of July 1974 either (a) by act of parties, whether by way of sale, gift, exchange, mortgage or lease or any other disposition made inter-vivos, or (b) under a decree or order of a court, or

(c) for recovering any amount of land revenue due from such tribal, or for recovering any other amount due from him as an arrear of land revenue, or otherwise under the Maharashtra Cooperative Societies Act, 1960 or any other law for the time being in force but does not include a transfer of land falling under the provisions of sub-s. (3) of s. 36 of the Code and the terms 'tribal-transferor' and 'non- tribal transferee' have to be construed accordingly. The word 'tribal' as defined in s. 2 (1) (j) means a person belonging to a Scheduled Tribe within the meaning of the Explanation to s. 36 of the Code and includes his successors-in-interest. The expression 'relevant tenancy law' is defined in s. 2 (1) (g) to mean (1) the Bombay A Tenancy & Agricultural Lands (Vidarbha Region) Act, 1958, in relation to the Vidarbha region of the State (2) the Hyderabad Tenancy & Agricultural Lands Act, 1950, in relation to the Hyderabad region of the State, and (3) the Bombay Tenancy & Agricultural Lands Act, 1948, in relation to the rest of the State.

Sub-s. (1) of s. 3 of the Act provides as follows:

"3. (1) Notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, Tribunal or authority, the Collector either suo motu at any time, or on the application of a Tribal-transferor made within three years from the commencement of this Act shall, after making such inquiry as he thinks fit, direct that-

(i) the lands of the Tribal-transferor and non-Tribals transferee so exchanged shall be restored to each other; and the Tribal-transferor, or as the case may be, the non-Tribal-transferee shall pay the difference in value of improvements as determined under cl. (a) of sub-s. (4), or

(ii) the land transferred otherwise than by exchange be taken from the possession of the non-Tribal-transferee, and restored to the Tribal-transferor, free from all encumbrances, and the Tribal-transferor shall pay such transferee and other persons claiming encumbrances the amount determined under cl. (b) of sub-s. (4).

Provided that, where land is transferred by a Tribal transferor in favour of a non-Tribal-transferee before the 6th day of July 1974, after such transferee was rendered landless by reason of acquisition of his land for a public purpose, then only half the land so transferred shall be restored to the Tribal-transferor".

Sub-ss. (2) to (4) contain detailed provisions for the terms upon which the Collector shall make an order for restoration of lands to tribals by their non-tribal transferees under cl. (i) or cl. (ii) of sub-s. (1) of s. 3 of the Act. Although these provisions are not really material for our purposes, we would briefly refer to A them to show that the impugned Act makes detailed provisions with a view to strike a balance between the mutual rights and obligations of the parties upon the making of an order for restoration of such lands to members of Scheduled Tribes under cl. (i) or cl. (ii) of sub-s. (1) of s. 3 and the conditions upon which it can be effected. Sub- s. (2) provides that where any land restored to a tribal under cl. (i) of sub-s. (I ) is burdened with encumbrances, then such encumbrances shall be transferred therefrom and attached to the lands restored to the non-tribal or the tribal, as the case may be. Sub.s. (3) injoins that a tribal shall notwithstanding anything contained in any law for the time being in force in the State, be entitled to restoration of lands under the section only if he undertakes to cultivate the land personally and to pay such amount to the nontribal as the Collector may under sub-s. (4) determine. Sub-s. (4) casts a duty on the Collector to determine in the prescribed manner the value of the improvements, if any, where lands are restored under cl. (i) or cl. (ii) of sub-s. (1), and the manner of its payment. Clauses (a) to (g) thereof contain detailed provisions as to the manner of payment. By cl. (a) it is provided that where lands are restored under cl. (i) of sub-s. (1) i. e. where the land of a tribal exchanged with a non-tribal is restored to such tribal, if the value of improvements made by a tribal is found to be more, the difference shall be paid by the non- tribal to the tribal and vice versa. By cl. (b) it is next provided that where the land of a tribal transferred to a non-tribal is restored to him, the amount payable by the tribal shall be an amount equal to 48 times the assessment of the land or the amount of consideration paid by the non- tribal for acquisition of the land, whichever is less plus the value of the improvements, if any, made by the non- tribal to be determined by the Collector. Explanation to cls. (a) and (b) lays down that the Collector in determining the value of any improvements under cl. (b) shall have regard to (i) the labour and capital provided or spent on improvements, (ii) the present condition of improvements,

(iii) the extent to which the improvement is likely to benefit the land during the period of 10 years next following the year in which such determination is made, and

(iv) such other factors as may be prescribed. Cl. (c) directs that the amount representing the difference in the value of improvements as determined by the Collector under cl. (a) shall be payable either in a lump sum or in such annual instalments not exceeding 12 (with simple interest a 4.5% per annum) as the Collector may determine. Cl. (d) enjoins that where land in restored to a tribal under cl. (i) of sub-s. (1) i. e. in case of restoration of the land exchanged, the tribal shall pay to the non-tribal or other person claiming encumbrances, the amount determined under sub-s. (4) either in lump sum or in such annual instalments not exceeding 12 (with simple interest at 4.5% per annum) as the Collector may determine. Cl. (e) provides for apportionment of the amount determined under cl. (b) among the transferee and the persons claiming encumbrances in the

manner provided therein. Cl. (f) provides that during any period for which payment of rent is suspended or remitted under the relevant tenancy law, the tribal or non-tribal shall not be bound to pay the amount in lump sum or the amount of any instalment fixed under sub-s. (4) or interest thereon, if any. Cl. (g) is the eligibility clause. If the tribal or the non-tribal, as the case may be, fails to pay the amount in lump sum or remains in arrears of two or more instalments, the amount so remaining unpaid (with interest thereon at 4.5% per annum) shall be recoverable by the Collector as arrears of land revenue. The amount so recovered shall be paid by the Collector to the non-tribal and persons claiming encumbrances, if any, or as the case may be, the tribal.

S.4 of the Act is in these terms:

"4. Where any land of a Tribal is, at any time on or after the 1st day of April 1957 and before the 6th day of July 1974, purchased or deemed to have been purchased or acquired under or in accordance with the provisions of the relevant tenancy law by a non-Tribal- transferee or where any acquisition has been regularised on payment of penalty under such law and such land is in possession of a non Tribal-transferee and has not been put to any non-agricultural use on or before the 6th day of July 1974, then the Collector shall, notwithstanding anything contained in any law for the time being in force, either suo motu at any time or on an application by the Tribal made within three years from the commencement of this Act and after making such inquiry as he thinks fit, direct that the land shall, subject to the provisions of sub-s. (4) of s. 3, be restored to the Tribal free from all encumbrances and that the amount of purchase price of a proportionate part thereof, if any, paid by such non-tribal-transferee in respect of such land in accordance with the relevant tenancy law shall be refunded to A such non-Tribal-transferee either in lump sum or in such annual instalments not exceeding twelve (with simple interest at 4.5% per annum) as the Collector may direct. The provisions of clauses (d),

(e), (f) and (g) of sub-s. (4) of s. 3 shall, so far as may be, apply in relation to the recovery of the amount from the Tribal and payment thereof to the non-Tribal- transferee and the persons claiming encumbrances, if any".

It also contains a proviso which is in terms identical with the proviso to sub-s. (1) of s. 3 and also serves the same purpose.

Under the scheme of the Constitution, the Scheduled Tribes as a class require special protection against exploitation. The very existence of Scheduled Tribes as a distinctive class and the preservation of their culture and way of life based as it is upon agriculture which is inextricable linked with ownership of land, requires preventing an invasion upon their lands. The impugned Act and similar measures undertaken by different States placing restrictions on transfer of lands by members of the Scheduled Castes and Tribes are aimed at the State Policy enshrined in Art. 46 of the Constitution which enjoins that The State shall promote with special care the educational and economic interests of the weaker sections of the people and in particular of the Scheduled Castes and Tribes and shall protect them from social injustice and all forms of exploitation". One has only to look at the artlessness, the total lack of guill, the ignorance and the innocence, the helplessness, the economic and the educational backwardness of the tribals pitted against the artful, usurious,

greedy land grabber and exploiter invading the tribal area from outside to realize the urgency of the need for special protection for the tribals if they are to survive and to enjoy the benefits of belonging to the 'Sovereign, Socialist, Secular, Democratic Republic' which has vowed to secure to its citizen 'justice, social, economic and political' 'assuring the dignity of the individual'. The great importance which the Founding Fathers of the Constitution attached to the protection, advancement and prevention of exploitation of tribal people may be gathered from the several provisions of the Constitution. Apart from Art. 14 which, interpreted positively, must promote legislation to protect and further the aspirations of the weak and oppressed, including the tribal, there are Arts. IS (4) and 16 (4) which make special provision for reservation in Government posts and admissions to educational institutions. Even the Fundamental Rights guaranteed by Art. 19 (1) (d) and (e)7 that is, the right to move freely throughout the territory of India and the right to reside and settle in any part of the territory of India are made expressly subject to reasonable restrictions for the protection of the interests of any Scheduled Tribe. The proviso to Art. 275 specially provides for the payment out of the Consolidated Fund of India as grants-in-aid of the revenues of a State such capital and recurring sums as may be necessary to meet the cost of development schemes for the promotion of the welfare of the Scheduled Tribes in the State. Art. 330 provides for reservation in the House of the people for the Scheduled Tribes. Art. 332 provides for the reservation of seat for the Scheduled Tribes in the Legislative Assemblies of the States. Art. 335 specially directs that the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of the State. Art. 343 (2) empowers the President to specify the tribes or tribal communities or parts of them which shall be deemed to be Scheduled Tribes for the purpose of the Constitution. Arts. 244 and 244A of the Constitution make special provision for the administration and control of the scheduled areas and the scheduled tribes in any State by the application of the Fifth and the Sixth Schedules. Paragraph 3 of the Fifth Schedule particularly enjoins the Governor of each State having scheduled areas to report to the President annually or whenever so required, regarding the administration of the scheduled area in that State, and the executive power of the Union is extended by that paragraph to giving directions to the State as to the administration of the said area. Paragraph S (2) empowers the Governor to make regulations for the peace and good Government of any area in - any State which is for the time being a scheduled area and, 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 such area: (b) regulate the allotment of land to members of Scheduled Tribes in such areas; and (c) regulate the carrying on of business as money-lender by persons who lend

- money to members of the Scheduled Tribes in such area. Mention has already been made of Art. 46 of the Directive Principle which A specially enjoins the State to protect the Scheduled Castes and Tribes from all social injustice and from all forms of exploitation. All these provisions emphasize the particular care and duty required of all the organs of the State to take positive and stern measures for the survival, the protection and the preservation of the integrity and the dignity of the tribals. B The problem of how far and to what extent the law of contract should be used as an instrument of distributive justice has been engaging the attention not only of the Legislatures and the Courts but also of scholars. Kronman(l) in his thoughtful article 'Contract . Law and Distributive Justice, observes: C "If one believes it is morally acceptable for the State to forcibly redistribute wealth from

one group to another, the only question that remains is how far the redistribution should be accomplished". According to learned author, this could be achieved not only by taxation but also by regulatory control of private transactions. He accepts that distributive fairness can only be achieved by taxation or contractual regulation, at some sacrifice in individual liberty.

The present legislation is a typical illustration of the concept of distributive justice, as modern jurisprudents know it. Legislators, Judges and administrators are now familiar with the concept of distributive justice. Our Constitution permits and even directs the State to administer what may be termed 'distributive justice'. The concept of distributive justice in the sphere of law-making connotes, inter alia, the removal of economic inequalities and rectifying the injustice resulting from dealings or transaction between unequals in society. Law should be used as an instruments of distributive justice to achieve a fair division of wealth among the members of society based upon the principle: 'From each according to his capacity, to each according to his needs'. Distributive justice comprehends more than achieving lessening of inequalities by differential taxation, giving debt relief or distribution of property owned by on to many who have none by imposing ceiling on hol-

1. Yale Law Journal 1979-80, Vol. 89, p. 472.

dings, both agricultural and urban, or by direct regulation of A contractual transactions by forbidding certain transactions and, perhaps, by requiring others. It also means that those who have been deprived of their properties by unconscionable bargains should be restored their property. All such laws may take the form of forced redistribution of wealth as a means of achieving a fair division of material resources among the members of society or there may be legislative control of unfair agreements.

In the past forty years, most of the tribal societies have come under attack by economically more advanced and politically more powerful ethnic groups, who infilt-rated into tribal regions in search of lands and new economic possibilities. These population movements triggered a struggle for land in which the aboriginal tribesmen were usually losers, and deprived of their anoestral lands, turned into impoverished landless labourers. In order to meet the situation various forms of legislations have been brought in to save the tribals from extinction and prevent their enslavement n and degradation as destitutes. Much pioneering work has been done in the field of study of the Tribes and Tribals*. It is beyond the scope of this judgment to deal in depth with the sad plight of the Tribals or the insuperable problems facing them and the various measures adopted to prevent their extinction. One has only to read Professor Christoph von Furer-Heinmendorf's "Tribes of India-the struggle for survival" to understand the enormity of the social crimes that the non-tribals have been committing against the tribals. As the learned author rightly points out:

> "It is inherent in any plan for the protection and support of the tribal minorities that whatever benefits are envisaged for tribesmen must adversely affect the interests of some more advanced sections of the population. Alienation of tribal land cannot be prevented without depriving non-tribal landowners of the chance to enlarge their holdings, a curb on exploitation by moneylenders interferes with the activities of local businessmen, and any attempt to eradicate corrupt practices of minor officials

> diminishes Elwin Verrir: The Religion of an Indian Tribe (Bombay, 1955) Russell, R. V. The Tribes and Castes of the Central Provinces of India (London, 1916) Grigson. Sir Wilfrid: The Maria Gonds of Bastar (London, 1949) the income from dealings with ignorant and illiterate tribals. Thus any policy of tribal rehabilitation arouse the opposition of vested interests", The impugned Act is nothing but a remedial measure in keeping with the policy of the State for rendering social and economic justice to this weaker section of the society.

The taking of their lands may have been done by way of transfer under the ordinary laws in various ways. The processes and forms of law were apparently followed. But the result has been devastating. As a result of such unequal transactions which were grossly unconscionable and unjust, the tribals lost their lands to non-tribals and were rendered landless. It is implicit in the nature of the legislation that the law regards such transactions as unconscionable and oppressive, and directs restoration of the property to the tribal transferor treating the transfer to be non-est. It is axiomatic that a contract is liable to be set aside due to inequality of bargaining power, if someone without independent advice, enters into a con- tract on terms which are very unfair or transfers property for a consideration which grossly inadequate when his bargaining power is previously impaired by reason of his own need or circumstances, or by his own ignorance or infirmity, coupled with undue influences or pressures brought to bear on him by or for the benefit of the other. .

B. Bandyopadhyaya, Joint Secretary. Ministry of Labour, Government of India, and B. N. Yugandhar, Special Assistant to the Deputy Chairman, Planning Commission in their Report submitted to the Government in 1975 brought out the reasons for the justified sense of grievance felt by so many tribal populations in these words:

> "The Girijans came in touch with the administration only in a state of confrontation when they were tackled for infringement or infraction of one or the other regulation which in fact abridged, annulled or tinkered with their customary rights and privileges. Thus the Girijans of the Parvathipuram agency tract found themselves totally alienated from the administrative machinery and newly set up self-

governing institutions and were denied opportunities of gainful economic activities. They Suffered not only from poverty but also from a deep of insecurity. They found themselves deprived at each point and at each front. A deep sense of grievance and injustice enveloped the entire tribal population through decades of neglect by the local administration.

(Emphasis supplied) The legislation is based on the principle of distributive justice. The impugned Act is intended and meant as an instrument for alleviating oppression, redressing bargaining imbalance, canceling unfair advantages, and generally overseeing and ensuring probity and fair dealing. It seeks to reopen transactions between parties having unequal bargaining power resulting in transfer of title from one to another due to force of circumstances and also seeks to restitute the parties to their original position. Quite recently, this Court in Manchegowde & Ors v. State of Karnataka & Ors.(l) upheld the constitutional validity of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer Certain Lands) Act, 1973. It provided for restoration of

lands transferred by members of Scheduled Castes and Tribes where the grant of land was attached with a condition regarding prohibition of transfer of the granted lands. It repelled the contention that ss.4 and S of the Act which provided for avoidance of transfers were violative of Art. 14, Art. 19 (1) (f) and Art. 31 of the Constitution and observed that any transfer of such lands in violation of the prohibition conferred on the transferee only a defensible tit1e and therefore the provisions could not be held to be arbitrary, illegal and void.

Instances of legislations undertaken for distributive justice are not unknown. In Fateh Chand Himmatlal v. State of Maharashtra(2) the challenge was to the provisions of the Maharashtra Debt Relief Act, 1976. That Act did not prohibit the business of moneylending but it wiped out all debts due to moneylenders upto a certain date and obliged them to return to the debtors the securities obtained as a security for their debts. The Court held that the moneylending was not a trade or business, but if it was, the Act imposed reasonable restrictions on the business of moneylending with in the meaning of Art. 304 (b). The evil of money lending was not confined to isolated cases but was widespread as it affected a (1) [1984] 3 S.C.C. 301.

(2) [1977] 2 S.C.R. 828 .

very large number of agricultural and rural debtors. Considerable material was placed before the High Court and this Court held A that the material so placed showed that moneylending can be looked upon as a pernicious activity. The material disclosed that previous legislative attempts to grant relief to the debtors had failed, either because resolute attempts were not made to enforce the law, or because of the illiteracy, ignorance and above all the need of the borrowers or because of the dishonesty of the moneylenders or by a combination of all these factors. The question before the Court therefore was whether in view of all this evidence and the failure of the earlier laws to give relief to borrowers, could a Legislature, without violation any constitutional limitations, wipe out all debts and restore the security given for the debts to the borrowers. C In Pathumma v. State of Kerala(1) s.20 of the Kerala Agriculturists' Debt Relief Act, 1970 was challenged, first for lack of legislative competence, secondly as violative of Art. 19 (1) (f) and thirdly as violative of Art. 14. The Court by two separate judgments reiterated the view expressed in Fateh Chand Himmatlal's case, supra. S.20 of the Act provided for restoration of property of agriculturists sold in execution of decrees on repayment of purchase price in the manner specified therein. It made a distinction between a decreeholder who had become the purchaser of the property of an agriculturist sold in execution of a mortgage decree, and a stranger who purchased such property by Court sale. Again, s.20 distinguished between a stranger auction-purchaser and a bona fide alience who purchased such property from the auction-purchaser before the date of the publication of the Act. The Court held that the classification of the creditors was founded on an intelligible differentia that there was a reasonable nexus between the basis of classification and the object sought to be achieved and therefore the Act was not violative of Art. 14. Nor was provision contained in s.20 for restoration of property to agricultural debtors an unreasonable restriction within Art. 19 (S). As regards legislative competence the concurring judgment held that the Act was clearly relatable to Entry 30 in List II, namely, moneylending and moneylenders: relief of indebtedness. It was argued that s.20 of the Act gave relief when by sale of property the debt had ceased to exist. It was held that there was no reason why relief from indebtedness should be limited to subsisting indebtedness and could not

cover (1) [1978] 2 S.C.R. 537.

the necessity of providing relief to agriculturists who had lost their immovable property by court's sales in execution of decrees against them and who had been rendered destitute. What is of significance is that the Court in Pathumna's case having regard to the legislative history in the State of the relief from agricultural indebtedness and the sad plight of agriculturists who had, been rendered destitute upheld the validity of s.20 of the Act which provided for restoration of their immovable property sold in execution of any decree for recovery of a debt or sold under the provisions of the Revenue Recovery Act or sold in execution of any decree for arrears of rent etc. The Act did not deprive the purchaser of the property without payment of compensation but on the contrary it enjoined that the purchase money shall be refunded to him In the case where the decreeholder was the purchaser, the debtor was allowed to deposit one-half of the purchase money along with the application to the Court for restoration of possession and to repay the balance amount in 10 equal half-yearly instalments, together with interest thereon. As regards a stranger auction-purchaser the Court observed that he stood mere or less in the same position as the decreeholder cannot be heard to complain since he purchased the property as a distress sale and was therefore bound to restore the same to the agriculturist debtor. The law however treated him differently because he had nothing to do with the decree and was therefore enjoined to return the property to the agriculturist debtor on payment of the entire amount in lump sum. Further, where improvements had been effected on the property, the debtor was required to deposit the cost of such improvements for payment to the purchaser. It is not necessary to encumber the judgment with many citations.

The constitutional validity of the impugned Act has been challenged on several grounds, namely: (1) The provisions contained in ss.3(1) and 4 of the Act which provide for annulment of transfers of lands by tribals to non-tribals effected during the period specified therein and for restoration of possession to them is beyond the legislative competence of the State under Entry 18 in List II of the Seventh Schedule. (2) The adoption of the date April 1,1957 as the date from which there is annulment of transfers under ss.3 (1) and 4 is arbitrary and void as contravening Art. 14, as there is no reasonable nexus for the fixation of such date and the object sought to be achieved by the legislation. (3) The impugned Act is also violative of Art. 14 as it treats equals unequally since there is preferential treatment given to members of 4; Scheduled Tribes as against those of Scheduled Castes who also constitute the weaker section of the society without any rational basis. (4) The provisions contained in ss.3 (1) and 4 are void under Art. 13 (2) as they offend the principle of equality which is the basic structure of the Constitution, for a distinction is made between a non-tribal transferee who had diverted the lands obtained by him under a transfer from a tribal during the period from April 1, l957 and July 6, 1974 and put such lands to non-agricultural purposes, and other non-tribal transferees who also got into possession of the lands belonging to tribals under transfers effected during the same period but continued to use the lands for agricultural purposes, and such differential treatment is without any reasonable classification and thus offends against Art. 14 (5). The definition of non-tribal transferee contained in s.2 (1) (1) also suffers from the same vice as it allows transfers effected prior to March 15, 1971 to assignees of non tribal transfrees to escape the consequence of annulment under ss.3 (1) and 4 for which there is no lawful justification and thus the Act is in flagrant violation of the equality clause contained in Art.

14. And (6) s.9A of the Act amounts to an unreasonable restriction on the right to acquire, hold and dispose of property guaranteed under Art. 19 (1) (f) as there is denial of opportunity to the non-tribal transferees to be represented by a lawyer of their choice in proceedings initiated by the Collector suo motu or on an application by the tribal under s. 3 (1) or s. 4 of the Act. We are afraid, none of these contentions can prevail.

The first and foremost contention Is that the provisions contained in ss. 3(1) and 4 of the Act which provide for annulment of transfer of lands by tribals to non-tribals effected during the period specified therein and for restoration of possession of such lands to them are beyond the legislative competence of the State Legislature under Entry 18 in List 11 of the Seventh Schedule. It is urged that the State has no competence to make a law under Entry 18 in List II which had the effect to unsettle the titles which had vested validly in the non-tribal transferees either by transfer inter-vivos or by the decree or order of a Court. It is contended that there is no Legislative competence of the State Legislature to enact a law of this kind which purports to direct A' to transfer the lands to 'B' for the only reason that he got the lands by transfer from and happens to be a tribal. It is urged that there is no provision anywhere in the Constitution under which such a law could be enacted since the nexus of the impugned Act is not so much the land but the tribal. The submission is that without acquisition of the lands by the State from the non- tribal transferees the lands could not be restored to the tribals by mere annulment of transfers. We are unable to accept this line of argument.

The submission as regards lack of legislative competence of the State to enact the impugned Act stems on , a misconception of nature and content of the legislative power of the State under Entry 18 in List II which reads:

> "18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization . "

The contention advanced fails to take note that the impugned Act strikes at transactions relating to agricultural lands effected between members of Scheduled Tribes who admittedly belong to the weaker section of the society and persons not be longing to Scheduled Tribes. Experience in the past showed that members of the Scheduled Tribes had been exploited due to their ignorance and poverty by members belonging to the affluent and powerful sections of the society to obtain transfer of their lands by way of sale, gift, mortgage, exchange etc. for a nominal consideration or for no consideration at all rendering them practically landless. It was also realized that due to their multifarious duties the Sub-Divisional officers and the Collectors had accorded sanction to such transfers without application of mind to the prevalent circumstances. It was further felt that the members of Scheduled Tribes had become victims of circumstances by reason of their lands being sold for realization of arrears of land revenue or otherwise under the Maharashtra Cooperative Societies Act, 1960 or any other law for the time being in force. Much of the lands had been transferred by members of Scheduled Tribes under compulsion due to their indebtedness and their lands had passed into the hands of creditors landing money at an unusually high rate of interest and were thus in a position to dominate the will of the borrowers. The Committee appointed by the State Government pointed out in its Report that the provisions of the Maharashtra Land Revenue Code,

1966 and the relevant tenancy laws had not been effective in giving protection to persons belonging to the Scheduled Tribes. It recommended inter alia that provision should be made for restoring possession to 'members of Scheduled Tribes the lands which had been duly transferred by them to other persons. There is always a presumption when there is a transfer between a tribal and a non-tribal that it is an unequal bargain. As regards the weak and the helpless, the law guards them with a special protective care. The Legislature therefore stepped in and reopened such transactions by directing that lands be restored to the tribal-transferors free from all encumbrances tribal on payment by them to the non-tribal transferees the amounts determined by the Collector under sub-s. (4) of s. 3 The restoration of the possession under ss.3 (1) and 4 does not involve any deprivation of the property in the sense that there is unsettling of title without consideration. It makes detailed provisions setting out the conditions subject to which a transfer of agricultural lands by a tribal to a non-tribal may be nullified and possession restored. It also provides for the legal consequences that must ensue upon restoration of such possession like repayment of the consideration by the tribal-transferor. to the non-tribal transfree together with his liability to pay for the costs of improvements, if any, effected. The transferor has in addition to give an undertaking that he needs the lands for his personal cultivation, It further prescribes the mode of payment of the amount so determined. In substance the object of the legislation is restitution of the property to the persons to whom the lands originally belonged, subject to the adjustment y of equities between the parties.

The impugned Act in its true nature and character is a law relating to transfers and alienations of agricultural lands by members of Scheduled Tribes in the State to persons not belonging to Scheduled Tribes. Such a law does not fall within Entries 6 and 7 in List III but is within Entry 18 in List II. We may here set out Entries 6 and 7 in List llI:

> "6. Transfer of property other than agricultural land; registration of deeds and documents "
>
> "7. Contracts, including partnership, agency, con tracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural lands."

The words 'other than agricultural land' in Entry 6 and the words 'but not including contracts relating to agricultural land' in Entry 7 in List llI have the effect of delimiting the legislative power of the Union to make a law with respect to transfers and alienations of agricultural lands or with respect to contracts in relation thereto. The power to legislate cannot be denied to the State on the ground that the provisions of ss. 3 (1) and 4 of the Act incidentally trench upon the existing law, namely, the Transfer of Property Act, 1882 and the Contract Act 1872 or a law made by Parliament namely the Specific Relief Act, 1963. The power of the State Legislature to make a law with respect to transfer and alienation of agricultural land under Entry 18 in List II carries with it not only a power to make a law placing restrictions on transfers and alienations of such lands including a prohibition thereof, but also the power to make a law to reopen such transfers and alienations. Such a law was clearly within the legislative competence of the State Legislature being relatable to Entry 18 in List II of the Seventh Schedule.

The remaining contentions are of little or no avail to the appellants. The impugned Act having been placed in the ninth Schedule of the Constitution, the submission that the provisions of ss. 3 (1) and 4 thereof are inconsistent with, or take away, or p abridge any of the fundamental rights conferred by Art. 14, Art. 19 (1) (f) or Art. 31 of the Constitution, must be rejected at the very threshold because it is protected from any such challenge under Art 31 B.

Even otherwise, the remaining contentions cannot prevail. The contention that the adoption of the date April 1, 1957 as the date from which there is annulment of transfers under ss. 3 (1) and 4 was arbitrary and void as infring Art. 14, appears to be wholly misconceived. The adoption of the date April 1, 1957 in the definition of the term 'transfer' in s. 2 (1) (i) as the date for the provisions of ss. 3 (1) and 4 of the Act to operate is based on an intelligible or rational classification. It is permissible for the Legislature to make a classification on the basis of time for a law to operate. What is necessary is that there must be a reasonable nexus between the basis of classification as to time and the object A sought to be achieved. The Act adopts April 1, 1957 for nullification of transfers made by tribals to non- tribals under ss. 3 (1) and 4 because that was the 'tillers' day' for purposes of the Bombay Tenancy & Agricultural Lands Act, 1948 on the basis of which the non-tribal transferees could apply to the Tenancy Courts for purchase of their holdings on the ground that they were in cultivating possession thereof. There was therefore reasonable nexus for the fixation of such date and the object sought to be achieved and the impugned Act if not violative of Art. 14.

The next contention is that the impugned Act offends against Art. 14 of the Constitution because it treats equals unequally in that (1) members of Scheduled Castes who also constitute the weaker section of the society have been discriminated against, and (2) there is preferential treatment afforded to non-tribal transferees who had diverted the lands purchased by them to non-agricultural purposes and other non-tribal transferees who continued to use the same for agricultural purposes without any rational basis. Both the submissions are devoid of substance. In the first place, the appellants who are transferees from members of Scheduled Tribes cannot possibly plead the cause of members of Scheduled Castes. That apart, members of . Scheduled Tribes i.e. tribes who are mostly aboriginals constitute a distinct class who need the special protection of the State. Further, the question as to how far and by what stage such laws are to be implemented involves a matter of policy and therefore beyond the domain of the Courts. Secondly, the Act no doubt makes a distinction between a non-tribal transferee who had diverted the lands obtained by him under transfer from a p tribal during the period from April 1, 1957 to July 6, 1974 and had put such lands to non- agricultural purposes, and other non-tribal transferees who got into possession under transfers effected by tribals during the same period but continued to use the lands for agricultural purposes. There is no question of any differential treatment between two classes of persons equally situate. When a part of the land is diverted to a non-agricultural purpose viz. the construction of a dwelling house or the setting up of an industry, the State Legislature obviously could not have made a law for annulment of transfer of such lands by tribals under Entry 18 in List II as the lands having been diverted to agricultural purpose ceased to be agricultural lands. In the case of such non-agricultural Land, if the State Legislature made such law it would not be effective unless it was reserved for the assent of the President and received such assent.

Equally futile is the argument that the definition of 'non-tribal transferee' contained in s.2(1)(1) offends against Art. 14 as it permits . an assignee of a non-tribal tranferee effected prior to March 15, 1971 to escape the consequence of annulment under s.3(1) or s.4 of the Act. The definition of non-tribal transferee' in s.2(1)(1) is an inclusive one. the expression non-tribal transferee' as defined includes his successore-in-interest; and if he or his successor had, on or after March 15, 1971, transferred land in favour of any person whether a tribal or a non- tribal, comes within the preview of the definition. The Legislature appointed March 15, 1971 with a view to give retrospective effect to the provisions of ss.3(1) and 4 of the Act as that was the date on which the Government constituted the Committee to inquire into and report to the State Government on how for the provisions of the Maharashtra Land Revenue Code, 1966 and the relevant tenancy laws had been effective in giving protection to persons belonging to Scheduled Tribes. But it is not correct to say that the definition of 'non-tribal transferee' contained in s.2(1)(1) permits an assignee of non-tribal transferee effected prior to that date i.e. March 15, 1971 to escape the consequences of annulment under ss.3(1) and 4 of the Act. Such a construction of the definition of the expression 'non-tribal transferee' under s.2(1()1) would run counter to the scheme of the Act.

As regards the two provisos to ss.3(1) and 4 of the Act which are identical in terms, they are meant to operate in a case where a non-tribal transferee had acquired the land from a tribal by transfer during the period in question after his own land had been acquired for a public purpose. In such a case, only one-half of the land so transferred shall be restored to the tribal-transferor while the non-tribal transferee is allowed to retain the compensation amount for the land acquired. These provisos are meant to mitigate the hardship which otherwise would be caused to a non-tribal transferee who would again be rendered landless if he were required to restore the entire land under s.3(1) or s.4 of the Act.

The next and the last question that arises is whether s.9A of the Act is constitutionally void as it affects (i) the fundamental right of an advocate enrolled by the State Bar Council of Maharashtra to carry on his profession guaranteed by Art. 19(1)(g) of the Constitution and (ii) the right of the appellants who are non-tribals being prevented to be represented by a legal practitioner of their choice.

The problem before us has to be viewed from two angles: first, from the viewpoint of the legal practitioner, and secondly from that of the litigants. Though the question for consideration as to whether s.9A of the Act offends Art. 19(1)(g) is of considerable importance to the litigant public in general, and the legal profession in particular, it is no longer res integra, it being practically concluded by several decisions of the various High Courts, from both the view points noted above. S.9A of the Act reads:

"9A. Notwithstanding anything contained in this Act or any law for the time being in force, no pleader shall be entitled to appear on behalf of any party in any proceedings under this Act before the Collector, the Commissioner or the Maharashtra Revenue Tribunal:

> Provided that, where a party is a minor or lunatic, his guardian may appear, and in the case of any other person under disability, his authorised agent may appear, in

such proceedings."

The contention that an advocate enrolled under the Advocates Act, 1961 has an absolute right to practice before all Courts and Tribunals can hardly be accepted. Such a right is no doubt conferred by s.30 of the Advocates Act. But unfortunately for the legal profession, s.30 has not been brought into force so far though the Act has been on the Statute Book for the last 22 years. There is very little that we can do in the matter and it is for the Bar to take it up elsewhere. A person enrolled as an advocate under the Advocate Act is not ipso facto entitled to a right of audience in all Courts unless s.30 of that Act is first brought into force. That is a matter which is still regulated by different statutes and the extent of the right to practice must depend on the terms of those statutes. The right of an advocate brought on the rolls to practise is, therefore, just what is conferred on him by s.l4(1)(a), (b) and (c) the Bar Conncils Act, 1926.

In view of the settled law on the subject, we cannot but held that s.9A of the Act is not an unconstitutional restriction on advocates to practise their profession.

That brings us to the second aspect of the matter i.e. the socalled right of a litigant to be represented before the Collector in matters not covered by ss.3(1) and 4 of the Act. Now it is wellsettled that apart from the provisions of Art.22(1) of the Constitution, no litigant has a fundamental right to be represented by a lawyer in any Court. The only fundamental rights recognized by the Constitution is that under Art.22(1) by which an accused who is arrested and detained in custody is entitled to consult and be defended by a legal practitioner of his choice. In all other matters i.e. in suits or other proceedings in which the accused is not arrested and detained on a criminal charge, the litigant has no fundamental right to be represented by a legal practitioner. For aught we know the legislature felt that for the implementation of the legislation, it would not subserve the public interest if lawyers were allowed to appear, plead or act on behalf of the non-tribal transferees. It cannot be denied that a tribal and a non- tribal are unequally placed and non-tribal transferee being a person belonging to the more affluent class, would unnecessarily protract the proceedings before the Collector under ss.3(1) and 4 of the Act by raising all kinds of pleas calculated to delay or defeat the rights of the tribal for restoration of his lands The proceedings before the Collector have to be completed will sufficient despatch and the transferred lands restored to a tribal under sub-s.(l) of s.3 and s.4 of the Act without any of the law's delays.

In the result, the appeals must fail and are dismissed with costs.

N.V.K. Appeal dismissed.