Supreme Court of India
P.Rami Reddy & Ors. Etc vs State Of Andhra Pradesh & Anr. Etc on 14 July, 1988
Equivalent citations: 1988 AIR 1626, 1988 SCR Supl. (1) 443
Author: M Thakkar
Bench: Thakkar, M.P. (J)

PETITIONER:
P.RAMI REDDY & ORS. ETC.

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH & ANR. ETC.

DATE OF JUDGMENT14/07/1988

BENCH:
THAKKAR, M.P. (J)
BENCH:
THAKKAR, M.P. (J)
RAY, B.C. (J)

CITATION:
1988 AIR 1626 1988 SCR Supl. (1) 443
1988 SCC (3) 433 JT 1988 (3) 47
1988 SCALE (2)8

ACT:
Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (Regulation I of 1959) made by the Governor under para 5(2) of Fifth Schedule to the Constitution of India-Sec.3(1)-As substituted by Andhra Pradesh Scheduled Areas Land Transfer (Amendment) Regulation, 1970 (Regulation I of 1970)-Interpretation of-Sec. 3(1) in so far as it prohibits transfer of immovable property situated in scheduled areas by a 'non-tribal' to another 'non-tribal'-Whether constitutionally invalid being violative of Article 19(1)(f) as it obtained at the relevant time till its repeal by the Constitution (Forty-fourth Amendment) in 1979-Held Constitutionally valid.

Constitution of India-Fifth Schedule-Paragraph 5(2)(a)-Expression "Land"-Scope of-Whether used in narrow sense-Held-Expression land is comprehensive-Wide enough to include structures raised thereon.

HEADNOTE:
Section 3(1) of the Andhra Pradesh Scheduled Areas Land Transfer Regulation 1959 (Regulation I of 1959) prohibited transfer of immovable properties situated in the scheduled areas from a member of scheduled tribe to non-tribals

without previous sanction of the State Government. In order to facilitate effective enforcement of the said 1959 regulations, the Andhra Pradesh Scheduled Areas Land Transfer (Amendment) Regulation, 1970 was introduced. Regulation 1970 inter alia brought the following changes namely (i) transfers of land in scheduled areas in favour of 'non-tribals' were wholly prohibited in future and (ii) non-tribals holding lands in the scheduled areas were prohibited from transferring their lands in favour of persons other than tribals. The appellants who owned lands in the scheduled areas having acquired them from tribals and 'non-tribals' were affected by this amending Regulation of 1970. They filed writ petitions in the High Court challenging this regulation being unconstitutional. The High Court dismissed the writ petitions. Hence these appeals by Certificate under Article 133(1)(a) of the Constitution. The main contention of the appellants was that the impugned provisions were unconstitutional as being violative of Article 19(1)(f) of the Constitution as it obtained at the
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material time till it was repealed by the Constitution (Forty-fourth) Amendment in 1979 because they imposed unreasonable restrictions on the non-tribal holders of properties in the scheduled areas. Dismissing the appeals and while tracing a short history of the legislation, this Court,
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HELD: originally all the lands in these tracts were owned by the 'tribals'. With the advent of the 'non-tribals' in the late 19th Century and early 20th Century, the lands changed hands from 'tribals' to 'non-tribals'. This change of ownership was a result of exploitation raising: (1) In the context of money lending operations and (2) in the context of dubious and unconscionable dealings in the course of trade. The 'non-tribals' had so often circumvented the legislation enacted in order to protect the 'tribals' by recourse to benami transactions and by recourse to dubious devices. The poor ignorant, illiterate, and unsophisticated tribals had succumbed to the wiles of the economically stronger and unscrupulous 'non-tribals'. A legislation which in essence and substance aims at restoration to the 'tribals' of the lands which originally belonged to the 'tribals' but which passed into the hands of 'non-tribals' in the aforesaid background certainly cannot be characterised as unreasonable. [455G-H; 456A-C]

No unreasonableness is involved in making the prohibition against transfer to 'non-tribals' applicable to both the 'tribal' as also to the 'non-tribal' owner in the scheduled area. As a matter of fact it would have been unreasonable to do otherwise. In the absence of protection, the economically stronger 'non-tribals' would in course of time devour all the available Lands and wipe out the very identity of the tribals who cannot survive in the absence of

the only source of livelihood they presently have. [457C-D]

The submission that the prohibition against transferring the properties to 'non-tribals' being in absolute terms, a non-tribal' cannot even raise a loan on his properties even in the event of the 'non-tribal' being under economic compulsion to do so cannot be acceded to as it overlooks the amendment introduced by Sec. 3A(1) inserted by Regulation 1 of 1971. [458A-B]

Tribes of India The Struggle for Survival (1982-83 edition) by Christoph von Furer-Haimendorf; The Continent of Circe, [1965] by Nirad C. Chaudhari; Manchegowda and Ors. v. State of Karnataka, [1984] 3 SCC p. 301 and Lingappa Rochanna Appelwar v. State of Maharashtra. [1985] 1 SCC 479, referred to.

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The argument that the expression 'Iand' has been used in its restricted sense in paragraph 5(2)(a) of Schedule V to the Constitution of India and therefore the impugned provisions prohibiting the transfer of lands along with structures thereon by employing the expression 'immovable property' is not in accordance with law is devoid of merit for two reasons: firstly, there is no reason to believe that `land' has not been employed in its legal sense. The expression 'land' in its legal sense is a comprehensive expression which is wide enough to include structures, if any, raised thereon and secondly to interpret the expression 'land' in its narrow sense is to render the benevolent provisions impotent and ineffective. In that event the prohibition can be easily circumvented by just raising a farm house or a structure on the land. The impugned provisions were inserted by the Amending Regulation precisely to plug such loopholes and make the law really effective. [.158C-D; 459D-E]

The Dictionary of English Law, [19591 Edition Vol. 2 p. 1053 by Earl Jowitt; Words and Phrases Judicially Defined, By Roland Burrows-Vol.IlI 1944 Edition p. 206 and The Law Lexicon, By p. Ramanatha Aiyar-Reprint Edition 1987-p. 700, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2299- 2300 of 1972.

From the Judgment and order dated the 24.9.1971 of the Andhra Pradesh High Court in Writ Petition Nos. 806 & 3161 of 1970.

L.N. Sinha and S. Madhusudan Rao for the Appellants. T.S. Krishnamurthi Iyer, K. Ram Kumar and K. Ram Mohan for the Respondents.

Subodh Markandaya and Mrs. C. Markandaya for the interveners.

The Judgment of the Court was delivered by THAKKAR, J. A challenge to the validity of a provision' in so far as it prohibits the transfer of any immovable property situated in the scheduled areas of Andhra Pradesh by a 'non-tribal' in favour of another 'non-tribal' having been repelled by the High Court upon

1. Section 3(1) of the Andhra Pradesh Scheduled. Areas Land Transfer Regulation, 1959 as inserted by Regulation I of 1970. (Reproduced at page 6-Footnote 3).

testing on the touchstone of constitutionality, the present appeals have been preferred by some of the unsuccessful original Writ Petitioners. Some others have intervened upon their application for leave to intervene having been granted by this Court.

The appellants and the interveners have by and large reiterated 13 the same contentions before this Court in support of their plea that the impugned provision is unconstitutional as being violative of Art. 19(1)(f) of the Constitution of India as it obtained at the material time till its repeal by the 44th Amendment in 19793.

A short history of the legislation may be briefly traced to the extent considered necessary. In the Andhra Area there existed before the inauguration of the Constitution, certain laws including the Agency Tracts Interest and Land Transfer Act, 1917 which inter alia prohibited transfer of land in the Agency Tract areas except in favour of members of hill tribes conferring upon the persons belonging to the Scheduled Tribes certain benefits. After the Constitution of India came into force, Art. 244 of the Constitution and the Fifth Schedule were made applicable to the administration of the scheduled areas. Para 6 of the Fifth Schedule empowered the President to notify the Scheduled areas in consultation with the Governor of the State. The scheduled areas in Andhra region of this State were notified by the President through the Scheduled Area (Part 'A' States) order, 1950. Para 5(2) of the Fifth Schedule empowered the Governor of the State to make Regulations for the peace and good Government of the Schedule Areas. Accordingly, the Governor made the A.P. Scheduled Areas Land Transfer Regulation, 1959, (Regulation I of 1959). This Regulation came into force with effect from 4.3.1959. Section 3(1) of this Regulation prohibited transfer of immovable properties situated in the scheduled areas from a member of scheduled tribes to non tribals without previous sanction of the State Government or subject to rules made in this behalf, with the previous consent in writing of the Agent or of any prescribed officer. Similar laws designed to protect the tribals from exploitation were in operation in the Telengana area of the then State of Hyderabad. In exercise of powers under paragraph 5(2)(a) of Fifth Schedule of the Constitution the Governor enacted the Andhra Pradesh Scheduled Area Laws (Extension and Amendment) Regulations, 1963 whereby certain rules and regulations which already existed, and were in operation in the Andhra area of the State were

2. By a Certificate under Art. 133( l)(a) of the Constitution of India.

3. With effect from June 20. 1979.

extended to all parts of the State. The result was that the Andhra Pradesh Scheduled Areas Land Transfer Regulations came to be extended to the Telengana area of the State as well.

Under the 1959 Regulation, any transfer of immovable property situated in the Agency Tracts, by a member of a Scheduled Tribe was declared null and void unless, made in favour of any other member of a Scheduled Tribe or a registered cooperative society composed solely of members of the Scheduled Tribes or with the.previous consent in writing of the Agent. The said Regulation further empowered the Agent to decree an ejectment against any person in possession of any immovable property, the transfer of which was made in contravention of its provisions and to restore it back to the transferor or his heirs. If the transferor or his heirs were not willing to take the property or where their whereabouts are not known? the Agent was further empowered to order assignment or sale of the property to any other member of a Scheduled Tribe or a registered cooperative society composed solely of members of the Scheduled Tribes or otherwise dispose of it, as if it was a property at the disposal of the State Government However, as difficulties were experienced by the Government in implementing the ejectment procedures under the said Regulation, inasmuch as it was not always easy for the concerned authority to ascertain the origin of the right under which the non-tribal is claiming possession and whether the land now under the possession of a non tribal was previously acquired from a tribal or not, the said 1959 Regulation was amended by the Andhra Pradesh Scheduled Areas Land Transfer (Amendment) Regulation, 1970 with a view to remedy the said mischief. The amending Regulation of 1970 in order to facilitate effective enforcement of the said 1959 Regulations introduced interalia, the following changes, namely:

> (i) A rule of presumption was introduced to the effect that unless the contrary is proved, where a non- tribal is in possession of land in the Scheduled areas, he or his predecessors-in-interest, shall be deemed to have acquired it through transfer from a tribal;
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> (ii) Transfers of land in Scheduled Areas in favour of non-tribals shall be wholly prohibited in future;
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> (iii) Non-tribals holding lands in the Scheduled Areas shall be prohibited from transferring their lands in favour of persons other than tribals. Only partitions and devolution by succession of lands held by them shall be permitted; and
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> (iv) Where a tribal or non-tribal is unable to sell his land to a tribal on reasonable terms, it shall be open to him to surrender the land to Government who shall thereupon be obliged to acquire it on payment of appropriate compensation.

Clause (a) of substituted section 3(1)3 rendered all the transfers made except those in favour of a tribal, to be null and void. Clause (b) of sub-section (1) of Section 3 raises a presumption that any immovable property in possession with a non-tribal would be presumed to have been acquired by such person through a tribal. Clause (c) of sub- section (1) of Section 3 provides for payment of compensation to the non-tribal at the rate specified in Section 10 of Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961. The Andhra Pradesh Sec. 3 (1)(a) Notwithstanding anything in any

enactment rule or law in force in the Agency tracts any transfer of immovable property situated in the Agency tracts by a person, whether or not such person is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of person, who is a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Co operative Societies Act, 1964 (Act 7 of 1964) which is composed solely of members of the Scheduled Tribes.

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

(c) Where a person intending to sell his land is not able to effect such sale, by reason of the fact that no member of a Scheduled Tribe is willing to purchase the land or is willing to purchase the land on the terms offered by such person, then such person may apply to the Agent, the Agency Divisional officer or any other prescribed officer for the acquisition of such land by the State Government, and the Agent. Agency Divisional officer or the prescribed officer, as the case may be by order, take over such land on payment of compensation in accordance with the principles specified in Section 10 of the Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961, (Act, X of 1961), and such land shall thereupon vest in the State Government free from all encumbrances and shall be disposed of in favour of members of the Scheduled Tribes or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964 composed solely of members of the Scheduled Tribes or in such other manner and subject to such conditions as may be prescribed.] Regulation No. 1 of 1970 inserts sub-section (4) in Section 3 whereby 'transfer' has been defined to include a sale in execution of a decree including a benami transaction. The only species of transfer which has been excluded from the operation of the regulation is petition or devolution by succession. Provision has been made for the ejectment of persons who came into possession of such lands as a result of such transfers and for the restoration of land to the original transferor or his heirs. By Regulation 1 of 1971 Section 3-A was introduced whereby a mortgage without possession in favour of a Bank or institution approved by the Government was permitted subject to certain conditions. The Governor further framed a regulation to amend the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959, being A.P. Regulation No. 1 of 1978 which came into force with effect from October 24, 1978. Regulation No. I of 1978 inserted sections 3-B and 6-A. Section 6-B prohibited registration of documents of transfer while sections 6-A and 6-B respectively provided for punishment for acquiring any immovable property after a decree for ejectment was passed. The punishment is to the extent of rigorous imprisonment of one year or fine of Rs.2000 or both. Section 6-B makes such an offence cognizable.

The appellants own lands, and have immovable properties in the Scheduled areas of Andhra Pradesh, and have been cultivating their lands for the past many years. Some of them have acquired these lands in the remote past, and some in the recent past by purchase, some from the tribals, and some from the non-tribals. By the amending Regulation which is now impugned, all acquisitions of immovable property by transfer from tribals? and non-tribals alike, are declared null and void. The appellants are all non-tribals, and are affected by this amending Regulation. Some of them belong to

the Scheduled areas in the Telengana region, and some of the Scheduled areas in the Andhra region. But, they have a common grievance that the Regulation cuts at the root of their right to the immovable properties, which have been in their possession for the past many years.

The principal plea of the appellants before this Court is that in so far as the impugned provision seeks to control or restrict the right of transfer of immovable property by a 'non-tribal' person it is void and that the High Court has erred in holding otherwise.

Be it realized that the question whether or not the impugned regulation brought into force in 1970 has retrospective operation as contended by the State or whether it merely has a prospective operation as held by the High Court does not fall for consideration in the present group of appeals. This question has been raised in another set of appeals which are awaiting decision before this Court. We therefore do not deal with this dimension of the issue in the present judgment and refrain from expressing any opinion on this question.

It may also be mentioned that the thoroughly untenable plea unsuccessfully advanced before the High Court that the Government had exceeded the power conferred by para 5(2) of Schedule V of the Constitution was not exercised for the peace and good governance of the scheduled area, has not been reiterated before this Court. This Court is therefore not required to deal with this fact which has been fully, adequately, and most satisfactorily dealt with by the High Court which unhesitatingly turned down the plea.

The reasonableness or otherwise of the restrictions imposed by the impugned provision cannot be tested in void. The socio-economic landscape in the backdrop of which the compulsion to legislate was occasioned needs to be painted to enable the Court to approach in a meaningful manner the problem posed by the challenge rooted in the submission that these restrictions are unreasonable from the perspective of Article 19(1) of the Constitution of India inasmuch as these are not essential for the protection of the interests of the Scheduled Tribes. To this end the following picture emerging from the additional counter filed by the State drawn from sources which have rightly been considered as authentic by the High Court deserves to be highlighted:

> 1. Within the scheduled areas of both Telengana and Andhra Pradesh regions the land was entirely in occupation of different Tribal communities. The area was an inaccessible tract of land covered by forests and hills. These tribal communities were in occupation of lands and lived by shifting cultivation and gathering whatever produce that was available.
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> 2. The non-tribals who arrived in these areas landed in the 19th Century in certain areas and the early 10th Century in certain other areas found the tribals who were in occupation of these lands an easy prey for the schemes of exploitation. The non-tribals were lending money to the tribal communities and taking the land belonging to them as security though nothing was taken in writing from a tribal. The rates of interest charged ranged between 25 to 50 per cent and in certain cases even 100 per cent. The tribals who were tradi VINEET tionally honest and who were

simple in their thought and habits fell an easy prey to the schemes of the non-tribals.

3. None of these money lenders ever credited any amount paid by the tribals towards their debt and whatever entries were made in the books of the money lenders were implicitly believed by the tribals. The tribals were not aware that when produce was sold to the non-tribals, they were using a larger weight and a smaller weight was applied for selling outside goods to the tribals. The indebtedness of the tribal had taken the form of bonded labour in many cases. The debt could never be discharged by the tribals.

4. The money lenders continued to be in occupation of most of the lands and the tribals became their serfs. The non-tribals have also forcibly occupied some of the lands. The tribals were ignorant and they were not aware that they could go and report to the concerned authorities about the contravention of the Regulations protecting their rights. The non-tribals have been taking full advantage of their ignorance and exploited them and are continuing to exploit them.

5. There were several rebellious movements in the Scheduled areas against the oppression by the money lenders and rapacious landlords. Exploitation of Tribals was a cause of many disturbances such as Ramparebellion in East Godavari in about 1899. In comparatively recent times also in Adilabad district the tribals rebelled in 1941 as a result of alienation of land and forest reservation rules and even in 1967-68, most of the tribals fell an easy prey to some of the political leaders who promised that the lands in Scheduled areas would be restored to them and that the non-tribals would be driven out.

6. It is a known fact that these tribal communities joined hands with the so called revolutionaries and again there was an uprising in the tribal area against the non-tribals which had started spreading to the plains areas also.

7. The tribal communities which went into the grip of revolutionaries were not able to extricate themselves out of their grip. It is only after the tribals were promised by the Government that the land would be restored to them and the exploi-

tation by non-tribals would be checked and after arresting the several revolutionaries peace has prevailed in several parts of the scheduled areas. If the Scheduled Tribes were not put back in possession of the land and measures were not taken to prevent exploitation by non-tribals peace would not have prevailed in the Scheduled Areas.

8. It was observed by several committees that the non-tribals were able to find ways and means to circumvent the provisions of Regulation I of 1959 by entering into benami trans actions and other clandestine transactions with unsophisticated tribals. It is absolutely necessary to create conditions for peace and maintain peace and prevent the new non-tribals from settling down in the Scheduled area. If the

alienations are permitted to the non-tribals there is a danger of large scale exploitation by the new non-tribal again with the result peace will be disturbed in that area.

9. It is only with a view to maintain peace and to govern the area effectively Regulation I of 1970 was passed by the Governor. A non-tribal who validly acquired the title will not be disturbed, but he is not allowed to sell his land to a non- tribal which will inevitably mean new entrants into this area.

10. In a sample survey conducted in Chintapalli and Bhadra chalam it was found that the average size of holding per family is only 3 to 4 acres. But even this extent of land was either mortgaged or otherwise transferred in favour of non tribals and they are in possession of the lands.

11. Unless new entrants into the Scheduled areas are prevented from settling down in the Scheduled areas by purchasing properties either from tribals or non-tribals, it is not possible to prevent the exploitation of the unsophisticated tribals. It is only with a view to enforce the valid provisions of Regulation I of 1959, the Regulation viz., Regulation I of 1970 was made. It is in the interests of the tribals and for their protection Regulation I of 1970 was passed, because without restricting or prohibiting the alienation of lands in the pos session of non-tribals to non-tribals the objectives cannot be achieved.

What has emerged from the additional counter filed by the State in the High Court is buttressed by the contents of a treatise authored by a well-known research scholar. The treatise is the culmination of laborious research carried out in respect of the very areas which form a part of the scheduled area of Andhra Pradesh in respect of which the impugned legislation has been enacted. It has been stated therein that more than 40 million Indians belong to tribal communities distinct from the great mass of the society. They are the aboriginal races from the Dravidian architects of ancient South Indian civilizations. The dramatic change in the peaceful co-existence between the tribals on the one hand and the more dynamic section of the society occurred when improved communications opened up previously inaccessible tribal areas and rapid growth of the Indian population led to pressure on the land's resources. 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 infiltrated into tribal regions in search of land and new economic possibilities. These population movements triggered a struggle for land in which aboriginal tribesmen were usually the losers and, deprived of their ancestral land, turned into impoverished, Ianndless labourers.

In this treatise the learned author has quoted the distressing forecast made by Nirad C. Chaudhari in his book 3 wherein he has lamented:

"In an industralized India the destruction of the aboriginal's life is as inevitable as the submergence of the Egyptian temples caused by the dams of the Nile .. As things are going there can be no grandeur in the primitive's end. It will not be even simple

> extinction, which is not the worst of human destinies. It is to be feard that the aboriginal's last act will be squalid, instead of being tragic. What will be seen with most regret will be not his disappearance but his enslavement and degradation.

It cannot therefore be gain-said that the tribals not only require to be preserved and protected in respect of their economic and educational interest but they also require to be immunized from social injustice and exploitation. The Founding Fathers of the Constitution of

1. Tribes of India The Struggle for Survival (1982-83 edition) by Christoph von FurerHaimendorf. 2. Inside of front flap.

2. Inside of front flap.

3. The Continent of Circe. 1965.

India have in their wisdom and foresight taken cognizance of this vital aspect as is evidenced by the provisions embodied in Article 15(4)1 and Article 462 of the Constitution of India.

The constitutional mandate reflected in the aforesaid Articles has influenced this Court in no small measure in upholding the constitutionality of the impugned legislative provisions enacted with an eye on preserving and protecting the interest of the tribals in the lands in the tribal areas. Reference in this behalf may be made to Manchegowda and Ors. v. State of Karnataka wherein the focus was on provisions prohibiting transfers to 'non-tribals' of lands granted to the tribals and on remedial measures for speedy restoration of such lands to the members of Scheduled Castes and Scheduled Tribes in cases where the lands had passed into the hands of the 'non-tribals'. Reference may also be made to Lingappa Pochanna Appelwar v. State of Maharashtra whereby this Court has upheld the constitutionality of the provisions enacted essentially in order to secure restoration to the original tribal owners the lands which had gone out of their hands and passed into the hands of the 'non-tribals'.

The problem presented in the present appeals is somewhat different from the problems which have surfaced so far. It brings into focus the challenge to the validity of the provisions enacted with a view to prevent 'non-tribals' along with 'tribals' from transferring lands including structures raised thereon in favour of 'non-tribals' in the Scheduled areas. It is in this context that appellants who are 'non-tribals' have mounted an assault on the constitutionality of the impugned provisions by recourse to the plea that these are violative of Article 19(1)(f) of the Constitution of India. It is alleged that the impugned provisions impose unreasonable restrictions on the 'non- tribal' holders of properties in the Scheduled areas.

1. Art. 15(4)"Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes."

2. Article 46 "Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker Sections-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 the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."

3. 1984(3) SCC P. 301

4. 1985(l)SCC 479.

The challenge rooted in Article 19(1)(f) cannot survive after the repeal of the said Article with effect from June 20, 1979 by virtue of the 44th Amendment. It cannot survive inasmuch as the doctrine of eclipse would come into play. All the same, it needs to be examined as it is understood that numerous transactions have taken place during the interregnum. More so as the matter is of vital importance from the platform of the welfare of the 'tribals' whose welfare had exercised the minds of the Founding Fathers in shaping the Constitution as evidenced by Article 15(4) and Article 46 thereof. The question of questions then is whether the impugned provisions prohibiting not only tribals hut also 'non-tribals' from transferring their lands and properties in the Scheduled areas to 'non-tribals' are ultra vires Article 19(1)(f). The impugned provisions have been assailed on the ground of their alleged 'unreasonableness. In order to succeed in their challenge the appellants will have to identify the obnoxious components or factors of the impugned provisions.

Two submissions have been urged in order to answer the question as to 'why' 'how' and in 'what manner' the impugned provisions are branded as unreasonable:

> 1. The prohibition imposed on the- 'tribals' restraining them from transferring lands and properties to 'non-tribals' is understandable inasmuch as the objective is to ensure that the total extent of properties held by the tribals is not diminished. However, there is no rational basis for restraining transfer of properties from 'non-tribals' to 'non-tribals' as such transfer does no more than substitute one 'non-tribal' by another 'non-tribal' and does not in any manner diminish the extent of properties held by the 'tribal'.
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> 2. The prohibition against transferring the properties to 'non tribals' being in absolute terms, a 'non-tribal' cannot even raise a loan on his properties even in the event of the 'non- tribal' being under economic compulsion to do so.

It is not possible to accede to any of the aforesaid submissions. As highlighted earlier, originally all the lands in these tracks were owned by the 'tribals'. With the advent of the 'non-tribals' in the late 19th Century and early 20th Century, the lands changed hands from 'tribals' to 'non-tribals'. This change of ownership was a result of exploitation arising: (1) in the context of money lending operations and (2) in the context of dubious and unconscionable dealings in the course of trade. The 'non-tribals' had so often circumvented the legislation enacted in order to protect the 'tribals' by recourse to benami transactions, and by recourse to dubious devices. The poor ignorant, illiterate, and unsophisticated tribals had succumbed to the wiles of the economically stronger and

unscrupulous 'non-tribals'. A legislation which in essence and substance aims at restoration to the 'tribals' of the lands which originally belonged to the 'tribals' but which passed into the hands of 'non-tribals' in the aforesaid background certainly cannot be characterised as unreasonable). The scanning must be done through the objective lens of the Court representing the collective conscience of the community and not through the tinged lens of appellants whose economic interests may be prejudicially affected by the impugned provisions. In other words, the Court examining the matter from the perspective of the Constitutional mandate armed with the criterion of objectivity and overall interest of the community at large must be satisfied that the restrictions are unreasonable.

As a matter of fact it would be unreasonable and unfair to hold that the impugned provisions are unreasonable on this account. Surely it is not unreasonable to restore upto the 'tribals' what originally belonged to them out of which they were deprived as a result of exploitative invasion on the part of 'non-tribals'. In the first place should lessons not be drawn from past experience to plug the loop-holes and prevent future recourse to devices to flout the law? The community cannot shut its eyes to the fact that the competition between the 'tribals' and the 'non-tribals' partakes of the character of a race between a handicapped one-legged person and an able bodied two legged person. True, transfer by 'non-tribals' to 'non-tribal would not diminish the pool. It would maintain status quo. But is it sufficient or fair enough to freeze the exploitative deprivation of the 'tribals' and thereby legalize and perpetuate the past-wrong instead of effacing the same? As a matter of fact it would be unjust, unfair and highly unreasonable merely to freeze the situation instead of reversing the injustice and restoring the status-quo-ante. The provisions merely command that if a land holder voluntarily and on his own volition is desirous of alienting the land, he may do so only in a favour of a 'tribal'. It would be adding insult to injury to impose such a disability only on the tribals (the victims of oppression and exploitation themselves) and discriminate against them in this regard whilst leaving the 'non-tribals' to thrive on the fruits of their exploitation at the cost of 'tribals'. The 'non-tribal' economic exploiters cannot be installed on the pedestal of immunity and accorded a privileged treatment by permitting, them to transfer the lands and structures, if any, raised on such lands, to 'non-tribals' and make profits at the cost of the tribals. It would not only be tantamount to perpetuating the exploitation and injustice, it would tantamount to placing premium on the exploitation and injustice perpetrated by the non-tribals. Thus it would be the height of unreasonableness to impose the disability only on the tribals whilst leaving out the 'non-tribals. It would also be counter productive to do so. It must also be emphasized that to freeze the pool of lands available to the 'tribals' at the present level is virtually to diminish the pool. There is no escape from this outcome because the realities of life being what they are with the population increase amongst the tribals remaining unfrozen, increase in their population will automatically diminish the size of their pool if the same is frozen. No unreasonableness therefore is involved in making the prohibition against transfer to 'non- tribals' applicable to both the 'tribal' as also to the non- tribal' owners in the scheduled area. As a matter of fact it would have been unreasonable to do otherwise. In the absence of protection, the economically stronger 'non-tribals' would in course of time devour all the available lands and wipe out the very identity of the tribals who cannot survive in the absence of the only source of livelihood they presently have. It is precisely for this reason that the Architects of the Constitution have with farsight and foresight provided in paragraph 5(2) of Fifth Schedule that the Governor may make regulations inter alia "prohibiting or restricting the transfer of land in the scheduled areas notwithstanding any provision embodied in the Constitution elsewhere". And as

has emerged from the foregoing discussion, it is unreasonable to restrict the prohibition against transfer to 'tribals'. It has to be made comprehensive enough to embrace the 'non-tribals' as well. With the improvement in the economic conditions of the 'tribals', there would not be much difficulty in finding 'tribal' purchasers. Besides, Section 3(1)(c) thoughtfully provides even for the contingency of not being able to find a 'tribal' willing or prepared to purchase the property. This provision obliges the State Government to acquire the property on payment of compensation as provided therein. One can envisage that some hardship would be occasioned to the owners to lands located in the scheduled areas. But such hardship would operate equally on the 'tribals' as well as the 'non-tribals'. Such hardship notwithstanding keeping in mind the larger perspective of the interest of the community in its entirety in the light of the foregoing discussion, the restrictions cannot be condemned as unreasonable. More so if the factor that the original acquisition by `non-tribals' from 'tribals' was polluted by the sins of exploitation committed by the non-tribals' is not ignored.

The next submission is built on the premise that the impugned A provision does not permit the owner even to raise a loan on the security of the land owned by him. The submission overlooks the amendment introduced by Section 3A(1)1 inserted by Regulation 1 of 1971. True, this provision was introduced after a few months. But then in none of these appeals a grievance is voiced that any of the writ petitioners in fact wanted to raise a loan, but could not do so, during this time-bracket of a few months. In any case the challenge can no longer survive, with the introduction of Section 3A.

Another argument which did not succeed in the High Court has been hopefully persisted with in the Court. The expression "Land" has been used in its restricted sense in paragraph 5(2)(a) of Schedule V and therefore the impugned provisions prohibiting the transfer of lands along with structures thereon by employing the expression "immovable property" is not in accordance with law. Such is the argument. This argument is devoid of merit for two reasons: Firstly, there is no reason to believe that 'land' has not been employed in its legal sense. The expression 'land' in its legal sense is a comprehensive expression which is wide enough to include structures, if any, raised thereon. While this proposition hardly needs to be buttressed, support can be sought from the following sources:

> "The Dictionary of English Law.' LAND, in its restrained sense, means soil, but in its legal acceptation it is a generic term, comprehending every species of ground, soil or earth, whatsoever, as meadows, pastures, woods, moors, waters, marshes, furze, and heath; it includes also houses, mills, castles, and other buildings; for with the conveyance of the land, the structures upon it pass also. And besides an indefinite ex tent upwards, it extends downwards to the globe's centre,

1. 3A(1): Special provision in respect of mortgages without possession: Notwithstanding anything contained in this Regulation or in any enactment, rule or law inforce in the Agency tracts, (1) any person whether or not such person is member of a Schedule Tribe, may, subject to the provisions of Clause (2) mortgage without possession, any immovable property situated in the Agency tracts, to any co- operative Society including a land mortgage bank, or to any bank or other financial institution approved by the State Government.

2. 1959 Edition-Vol. 2. p. 1053 by Earl Jowitt.

hence the maxim, Cujus est solum ejus est usque ad caelum et ad inferos; or, more curtly expressed, Cujus est solum A ejus est altum (Co . Litt. 4a)" "Words And Phrases Judicially Defined:1 The word 'land' would be variously understood by different persons. To a farmer the word 'land' would not mean his farm buildings; to a lawyer the word would include every thing that was upon the land fixed immovably upon it. Smith v. Richmond, [1899] A.C. 448, per Lord Halsbury, L.C., at p.

448."

"The Law Lexicon:2 The word "land" is a comprehensive term, including standing trees, buildings, fences, stones, and waters, as well as the earth we stand on. Standing trees must be regarded as part and parcel of the land in which they are rooted and from which they draw their support." D Secondly, to interpret the expression 'land' in its narrow sense is to render the benevolent provisions impotent and ineffective. In that event the prohibition can be easily circumvented by just raising a farm house or a structure on the land. The impugned provisions were inserted by the Amending Regulation precisely to plug such loopholes and make the law really effective. The High Court was perfectly justified in repelling this meritless plea. It is therefore not possible to accede to this submission.

Equally meritless in the submission that the presumption embodied in section 3(1)(b) is unreasonable. The High Court has unhesitatingly negatived this plea. The High Court has reasoned:

> "With regard to the presumption, which is impugned, it is a rebuttable presumption and a rule of evidence. The non-tribals who have acquired the lands, and properties of the tribals could be reasonably expected to disclose their title to the properties. This also accords with the rule of evidence, that when any fact is specially within the knowledge of any person the burden of proving that fact is upon him

1. By Roland Burrows-Vol. III 1y944 Edition p. 206. 2 . By P. Ramanatha Aiyar-Reprint Edition 1487-p. 700.

vide-Section 106 of the Indian Evidence Act. The tribals are mostly ignorant persons, and naturally suffer from in evitable handicaps in the matter of setting up or proving their rights to lands, and property which they had lost."

The reasoning is impeccable and faultless. The plea must accordingly fail.

The appeals must therefore fail and be dismissed. No costs.

H.S.K. Appeals dismissed.