

(2003) 11 SC CK 0047

In the Supreme Court Of India

Case No : Civil Appeal No. 11483 of 1996

Amrendra Pratap Singh

APPELLANT

Vs

Tej Bahadur Prajapati and Others

RESPONDENT

Date of Decision : 21-11-2003

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 71A
Constitution of India, 1950 — Article 244, 342
Criminal Procedure Code, 1973 (CrPC) — Section 145
Limitation Act, 1963 — Section 27
Madhya Pradesh Lan

Citation : AIR 2004 SC 3782 : (2004) AIRSCW 4103 : (2004) 1 ALD 85 : (2004) 98 CLT 19 : (2003) 9 JT 201 : (2004) 2 OLR 117 : (2003) 10 SCALE 45 : (2004) 10 SCC 65 : (2003) 6 SCR 42 Supp : (2003) 8 Supreme 597

Hon'ble Judges : R. C. Lahoti, J;Ashok Bhan, J

Bench : Division Bench

Advocate : V.K.S. Chaudhry, Vivek Raj Singh, Prakash Kr. Singh and A.S. Pundir, for the Appellant; Anoop G. Choudhary Suresh C. Gupta, Anil Hooda, Guneshwar, Kaushal Yadav and Ranbir Singh Yadav, for the Respondent

Final Decision : Disposed Of

Judgement

R.C. Lahoti, J.—The suit property consists of a piece of agricultural land situated in Sundergarh area of Mouza Durgapur, Rourkela. Prior to the year 1962, the property belonged to Chand Oram and Pera Oram. Both of them belong to oraon tribe, which is a scheduled tribe in the State of Orissa as notified vide the Constitution Schedule Tribe Order, 1950 issued in exercise of the power conferred by Clause (1) of Article 342 of the Constitution of India. On 21.12.1962 Chand and Pera transferred their right and interest in 0.75 decimals of land in favour of one Mangal Singh Manki. The said Mangal Singh Manki was also a person belonging to a scheduled tribe. Mangal Singh Manki, after obtaining the permission of the Sub-Divisional Officer, Pamposh, sold 0.40 decimals of land by a registered deed of sale dated 7.4.1964 executed in favour of one Ratnamani Mohapatra, and on the same day by another registered deed of sale transferred

the remaining 0.35 decimals of land to one Harihar Pradhan. On 6.9.1975 Dr. Amarendra Pratap Singh, the plaintiff-appellant purchased 0.195 decimals of land out of 0.40 decimals from Ratnamani Mohapatra. It is this land purchased by the plaintiff-respondent which forms the subject-matter of dispute. This land belonging to the plaintiff has come to be numbered as plot No. 1147/1.

2. According to the plaintiff he raised construction in the year 1963 over 0.05 decimal area out of the land purchased by him. When he proposed to raise construction over the remaining area, he was obstructed in doing so by Harihar Pradhan, the owner of the adjoining land, whereupon the plaintiff got in touch with his predecessor in-title Smt. Ratnamani Mohapatra. It was detected that in the map attached with the Sale Deed dated 6.9.1965 there was some error in description of the land forming the subject-matter of sale. Smt. Ratnamani Mohapatra executed a deed of rectification dated 31.8.1968 in favour of the plaintiff-appellant after having the land demarcated by Amin.

3. During the course of demarcation proceedings it was found that the defendant-respondent No. 1 had also purchased some land under a registered deed of sale dated 25.4.1967 from Chand and Pera and constructed two buildings thereon. However, the defendant-respondent No. 1 who had purchased land plot No. 1119 (new plot No. 957), had also encroached upon some portion of land of plot No. 147 (new plot No. 956) belonging to the plaintiff-appellant.

4. The dispute between the parties led to the initiation of proceedings u/s 145 of the Code of Criminal Procedure. In the year 1970 the plaintiff-appellant filed a suit for declaration of title, recovery of possession and issuance of permanent preventive injunction against the defendants. The defendant Nos. 1 to 3, who are the principal contesting defendants, denied the title of the plaintiff and pleaded their title by way of adverse possession over the suit land. The Trial Court decreed the suit and directed possession over the suit property to be restored to the plaintiff after demolition of the construction of the defendant No. 1 standing on the suit land. The defendant No. 1 preferred an appeal to the High Court. The High Court found the title of the plaintiff-respondent No. 1 to be proved but at the same time held the defendant No. 1 to have been in adverse possession over the property for the prescribed statutory period of 12 years, and therefore held the plaintiff-respondent No. 1 not entitled to a decree in the suit. The High Court reversed the judgment and decree of the Trial Court and directed the suit to be dismissed. Feeling aggrieved, the plaintiff has filed this appeal by special leave.

5. On behalf of the plaintiff-appellant the correctness of the finding as to defendant No. 1-respondent being in adverse possession of the property and having perfected his title by being in continuous and uninterrupted possession of the property for a period exceeding 12 years' time was seriously disputed, however, we are not inclined to enter into any revaluation of evidence and dislodge the finding of fact arrived at by the High Court. We would therefore proceed on an assumption that the defendant-respondent No. 1 has remained in possession of the property for a period of more than 12 years before the date of

the institution or the suit. The real question is whether he can be said to have perfected his title by way of, adverse possession? This question assumes significance because of the fact that the original owners of the land, namely, Chand and Pera, were persons belonging to a scheduled tribe and their successor-in-title Mangal Singh Manki was also a person belonging to the scheduled tribe.

6. The Orissa Merged States' Laws Act, 1950 was enacted by the Legislative Assembly of Orissa for the purpose of extending certain Acts and Regulations to certain areas administered as part of the State of Orissa. It received the assent of the Governor on 26.2.1950, which was published in the Orissa Gazette on 3.3.1950 and on that date the Act came into force. Section 7 of the Act, in so far as is relevant for our purpose, provided as under :

"7. Modification of Tenancy Laws in force in the merged States - Notwithstanding anything contained in the tenancy laws of the merged States as continued in force by virtue of Article 4 of the States Merger (Governor's Provinces) Order, 1949 -

XXX XXX XXX XXX

(b) an occupancy tenant shall be entitled-

(i) to freely transfer his holding subject to the restriction that no transfer of a holding from a member of an aboriginal tribe to a member of a non-aboriginal tribe shall be valid unless such transfer is made with the previous permission of the Sub-divisional Officer concerned;

(ii) to have full right over all kinds of trees standing on his holding;

(iii) to use the land comprised in the holding in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy;

(iv) to the benefit of the presumption by any Court that the rent for the time being payable by him is fair and equitable until the contrary is proved;

Explanation-(i) An 'occupancy tenant' means tenant or a raiyat having occupancy right in his holding under the tenancy laws continued in force in the merged States;

(ii) an 'aboriginal tribe' means any tribe that may from time to time be notified as such by the State Government;

xxx xxx xxx xxx"

7. Article 244 of the Constitution provides for the provisions of the Fifth Schedule being applicable to the administration and control of the scheduled areas and scheduled tribes in any State other than the State of Assam, Meghalaya, Tripura and Mizoram. Para 5 of the Fifth Schedule provides inter alia for the Governor to make regulations which may prohibit or restrict the transfer of land by or among the members of the Scheduled Tribes in such area and/or to regulate the

allotment of land to members of the Scheduled Tribes in such area.

8. In exercise of the powers conferred by sub-para 2 of paragraph 5 of the Fifth Schedule to the Constitution, the Governor of Orissa promulgated regulations known as The Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulations, 1956 (hereinafter referred to as the 'Regulations', for short). The assent of the President was received on 21.09.1956 and published in the Orissa Gazette Extraordinary on 4.10.1956, on which date the Regulations came into force. The Preamble to the Regulations speaks that the same were promulgated as it was considered expedient to control and check transfer of immovable property by the scheduled tribes in the scheduled areas of the State of Orissa. Clause (f) of para 2 of the Regulations defines 'transfer of immovable property' to mean 'mortgage with or without possession, lease, sale, gift, exchange or any other dealing with such property not being a testamentary disposition and includes a charge or contract relating to such property' (emphasis supplied). Regulation 3 provides as under :

3. Transfer of Immovable property by a member of the Scheduled Tribe - (1) Notwithstanding anything contained in any law for the time being in force any transfer of immovable property situated within a Scheduled Area by a member of a Scheduled Tribe shall be absolutely null and void and of no force or effect whatsoever unless made in favour of another; member of a Scheduled Tribe or with the previous consent in writing of the competent authority:

Provided that nothing, in this sub-section shall apply to any transfer by way of mortgage executed in favour of any public financial institution for securing a loan granted by such institution for any agricultural purpose:

Provided further that in execution of any decree for realization of the mortgage money no property mortgaged as aforesaid shall be sold in favour of any person not being a member of the Scheduled Tribes without the previous consent in writing of the competent authority.

Explanation -- For the purposes of this sub-section, a transfer of immovable property in favour of a female member of a Scheduled Tribe, who is married to a person who does not belong to any Scheduled Tribe, shall be deemed to be a transfer made in favour of a person not belonging to a Scheduled Tribe.

(2) Where a transfer of immovable property is made in contravention of Sub-section (1) the competent authority may, either on application by any one interested therein or on his own motion and after giving the parties an opportunity of being heard order ejectment against any person in possession of the property claiming under the transfer and shall cause restoration of possession of such property to the transferor or his heirs: In causing such restoration of possession the competent authority may take such steps as may be necessary for securing compliance with the said order or preventing any breach of peace :

Provided that if the competent authority is of the opinion that the restoration of possession of immovable property to the transferor, or his heirs is not reasonably practicable, he shall record his reasons thereof and shall subject to the control of the State Government settle the said property with another member of Scheduled Tribe or in the absence of any such member, with any other person in accordance with the provisions contained in the Orissa Government Land Settlement Act 33 of 1962.

Explanation - Restoration of possession means actual delivers of possession by the competent authority to the transferor or his heirs.

(3) Subject to such conditions as may be prescribed an appeal if preferred within thirty days of the order under Sub-section (2) shall, if made by the Collector lie to the Board of Revenue and if made by any other competent authority to the Collector or any other officer specially empowered by the Stats Government in this behalf.

(4) Subject to the provisions of Sub-section (3) the decision of the competent authority under Sub-section (2) shall be final and shall not be challenged in Court of law.

(underlining by us)

9. Under Regulation 3A where a person is found to be in unauthorized occupation of any immovable property of a member of the scheduled tribes by way of a trespass or otherwise, the competent authority may either on application by the owner or any person interested therein, or on his own motion, and after giving the parties concerned an opportunity of being heard, order ejectment of the person so found to be in unauthorised occupation and shall cause restoration of possession of such property to the said member of the scheduled tribe or to his heirs.

10. In the year 1975 by Orissa Regulation No. 1/1975 para 7-D was inserted by way of amendment along with a few other amendments. Para 7-D reads as under :

"7-D Amendment of the limitation Act, 1963 in its application to the Scheduled Areas - In the Limitation Act, 1963 in its application to the Scheduled Areas in the Schedule, after the words "twelve years" occurring in the second column against Article 65, the words "twelve years" and figure "but 30" years in relation to immovable property belonging to a member of a Scheduled Tribe specified in respect of the State of Orissa in [the Constitution (Scheduled Tribes) Order, 1950 as modified from time to time, shall be added)."

11. This amendment was given retrospective operation with effect from 02.10.1973.

12. Para 9 of the Regulations partially repealed the Orissa Merged States (Laws) Act, 1950. The relevant extracts is as under:

"9. Repeal -

(1) on and from the date of commencement of this regulation shall stand repealed, namely;

(a) xxx xxx xxx (b) The enactments mentioned in column 2 of the Schedule to the extent specified in column 3 thereof in so far as they are in force in the Scheduled Areas.

(2) (a) to (d)xxx xxx

SCHEDULE

LIST OF ENACTMENTS REPEALED (See Section-9)

Number and year (1) Short title (2) Extent of Repeal (3)

1. XXX xxx

2.Orissa Act IV of 1950 Orissa Merged States' Laws Act 1950 The words "subject to the restrictions that no transfer of a holding from a member of an aboriginal tribe to a member of a non-aboriginal tribe shall be valid unless such transfer is made with the previous permission of the Sub-divisional Magistrate concerned" in item 1 of Clause (d) of the section shall be omitted.

3. xxx xxx Xxx

13. The position emerging from the facts of the case, found proved or undisputed and the relevant position of law, as emerging from the Act and the Regulations referred to hereinabove, may be summed up. The original holders of the land, namely, Chand and Pera, were persons belonging to an aboriginal tribe, i.e. Oraon. Sundergarh, the area where the land is situated, is a tribal area. Chand and Pera Oram held the land as occupancy tenants. They could not have transferred their holding to a member of a non-aboriginal tribe though the transfer of holding by a member of one aboriginal tribe to a member of the same or another aboriginal tribe, was permitted. This restriction continued to remain in force by virtue of Section 7-D of the Orissa Merged States' Laws Act, 1950, from the year 1950 up to the year 1956. That restriction came to be deleted by Para 9 read with Entry 2 of the Schedule to the 1956 Regulations. But then the same restriction came to be imposed independently by Para 3 of the Regulations. While the 1950 Act imposed a restriction on the transfer of a holding by a member of an aboriginal tribe to a non-member except with the previous permission of the sub-divisional officer concerned, the 1956 Regulations enlarged the scope of the restriction by including, within the purview of prohibition, any transfer of any immovable property except with the previous consent in writing of the competent authority. The immovable property, referred to in para 3 of the Regulations, would obviously include a holding as well. The Regulations define 'transfer of immovable property'. The definition is very wide. Apart from the well-known modes of transfer such as mortgage, lease, sale, gift and exchange, what has been included therein is "any dealing with such property" which is non-

testamentary. Regulation 7-D has amended the provisions of the third column of the Schedule to the Limitation Act, 1963. The effect of this amendment is that the period of limitation prescribed for suit for possession of immovable property or any interest therein in a suit based on title, instead of being 12 years stands substituted by a period of 30 years, in the Limitation Act, which period would begin to run from a point of time when the possession of the defendant becomes adverse to the plaintiff in its applicability to immovable property belonging to a member of a Scheduled Tribe such as 'Oraon'. What is the scope of Regulation 7-D and to what immovable properties it would apply, shall be examined a little later.

14. It cannot be disputed that until 07.04.1964 the land was owned by Chand and Pera and then by Mangal Singh, all the three being members of an aboriginal tribe and a scheduled tribe. On 07.04.1964 the land came to be transferred to a person not belonging to any aboriginal tribe. Proceeding on the premise that in the year 1970, on the date of the filing of the suit (the exact date not being ascertainable) the defendant No. 1 had been in possession of the property for a period of more than 12 years. Can it be said that he had perfected his title by adverse possession or that the suit filed by the plaintiff had become barred by time on account of having been filed 12 years after the date when the possession of the defendant became adverse to the plaintiff or his predecessors-in-title? The period for which the defendant claims to be in possession has to be divided into two parts: (i) the pre-7.4.1964 period when the ownership of the land vested in the person or persons who belonged to an aboriginal tribe; and (ii) post-7.4.1964, when the ownership had come to vest in a person belonging to a non-aboriginal tribe consequent upon a transfer made by the previous permission of competent Authority. Two questions arise for consideration: firstly, what is the meaning to be assigned to the expression, 'transfer of immovable property' in relation to property owned by a member of a scheduled tribe to whom the Regulations apply; and secondly, whether right by adverse possession can be acquired by a non-aboriginal on the property belonging to a member of an aboriginal tribe. The 1956 Regulations have chosen to assign an extended meaning to the expression 'transfer of immovable property' so as to include within its meaning not only such methods of testamentary disposition as are known to result in transferring an interest in immovable property but also any 'dealing' with such property as would have the effect of causing or resulting in the transfer of interest in immovable property, is included therein. According to the Chambers Twentieth Century Dictionary (New Edition, 1983) 'deal' as a verb means to divide, to distribute; to throw about; to deliver and 'deal with' means to have to do with to treat of to take action in regard to. One of the meanings to the word 'deal' assigned in Black's Law Dictionary (6th Edition) is 'to traffic'. Dictionaries can be taken as safe guides for finding out meanings of such words as are not defined in the statute. However, dictionaries are not the final words on interpretation. The words take colour from the context and the setting in which they have been used. It is permissible to assign a meaning or a sense, restricted

or wider than the one given in dictionaries, depending on the scheme of the legislation wherein the word has been used. The court would place such construction on the meaning of the words as would enable the legislative intent being effectuated. Where the object of the legislation is to prevent a mischief and to confer protection on the weaker sections of the society the court would not hesitate in placing an extended meaning, even a stretched one. on the word, if in doing so the statute would succeed in attaining the object sought to be achieved. We may refer to Principles of Statutory Interpretation by Justice G.P. Singh (Eighth Edition, 2001) wherein at pp. 279-280 the learned author states- ". . . .in selecting one out of the various meaning of a word, regard must always be had to the context as it is a fundamental rule that 'the meanings of words and expressions used in an Act must take their colour from the context in which they appear'. therefore, 'when the context makes the meaning of a word quite clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of, according to lexicographers'. Judge Learned Hand cautioned 'not to make a fortress out of the dictionary' but to pay more attention to 'the sympathetic and imaginative discovery' of the purpose or object of the statute as a guide to its meaning."

15. Tribal areas have their own problems. Tribals are historically weaker sections of the society. They need the protection of the laws as they are gullible and fall pray to the tactics of unscrupulous people, and are susceptible to exploitation on account of their innocence, poverty and backwardness extending over centuries. The Constitution of India and the laws made thereunder treat tribals and tribal areas separately wherever needed. The tribals need to be settled, need to be taken care of by the protective arm of the law, and be saved from falling prey to unscrupulous device so that they may prosper and by an evolutionary process join the mainstream of the society. The process would be slow, yet it has to be initiated and kept moving. The object sought to be achieved by the 1950 Act and the 1956 Regulations is to see that a member of an aboriginal tribe undefeatable continues to own the property which he acquires and every process known to law by which title in immovable property is extinguished in one person to vest in another person, should remain so confined in its operation in relation to tribals that the immovable property of one tribal may come to vest in another tribal but the title in immovable property vesting in any tribal must not come to vest in a non-tribal. This is to see and ensure that non-tribals do not succeed in making in-roads amongst the tribals by acquiring property and developing roots in the habitat of tribals.

16. In support of the proposition that the expression 'transfer of immovable property' is capable of being assigned an extended meaning depending on the context and the setting in which it has been used so as to include therein such transactions as would not otherwise and ordinarily be included in its meaning, we may refer to a few decided cases.

17. The Maharashtra Agricultural Lands (Ceiling on holdings) Act, 1961, imposed

a ceiling on holding land and to effectuate the purpose sought to be achieved by the legislation, imposed restrictions on the transfer or partition of any land on or after the appointed date. Transfer was defined to mean transfer by act of parties whether by sale, gift, mortgage with possession, exchange, lease or any other disposition (underlining by us) made inter vivos. This Court in *Sanjay Dinkar Asarkar Vs. State of Maharashtra and Another*, , placed an object-oriented interpretation on the term 'disposition' and held - Though ordinarily the word 'disposition' in relation to property would mean disposition made by a deed or will but in the act it has to be given an extended meaning so as to include therein any disposition made by or under a decree or order of the Court."

18. In *Pandey Orson Vs. Ram Chander Sahu and others*, , the term 'transfer' as used in Section 71A of Chhotanagpur Tenancy Act, 1908, came up for the consideration of the Court. 'Transfer' was not defined in the Act. It was held that considering the situation in which the exercise of jurisdiction is contemplated, it would not be proper to confine the meaning of 'transfer' to transfer under the Transfer of Property Act or a situation where 'transfer' has a statutory definition. What exactly is contemplated by 'transfer' in Section 71A is where possession has passed from one to another and as a physical fact the member of the Scheduled Tribe who is entitled to hold possession has lost it and a non-member has come into possession, would be covered by 'transfer'. Their Lordships observed - "The provision is beneficial and the legislative intention is to extend protection to a class of citizens who are not in a position to keep their property to themselves in the absence of protection. therefore when the legislature is extending special protection to the named category, the Court has to give a liberal construction to the protective mechanism which would work out the protection and enable the sphere of protection to be effective than limit by its scope." Their Lordship referred to three earlier decisions of this Court, namely, *Manchegowda and Others Vs. State of Karnataka and Others*, , *Lingappa Pochanna Appelwar Vs. State of Maharashtra and Another*, , *Gamini Krishnayya and Others Vs. Curza Seshachalam and Others*, , and a decision of House of Lords in *D (a minor) v. Bershire County Council*, (1987) 1 All ER 20 laying down the proposition that a broad and liberal construction should be given to give full effect to the legislative purpose.

19. AIR 1977 1718 (SC) , is an interesting case showing how this Court dealt with an artistic device employed by a non-tribal to deprive a tribal of his land. The M.P. Land Revenue Code, 1959, imposed restrictions on the transfer of land by members of a Scheduled Tribe. Babu Lal, a non-tribal, filed a suit for declaration against Baddiya, a Bhel - Notified Scheduled Tribe, for declaration that his name be recorded in the revenue record as Bhumiswami over the land of Baddiya, Baddiya did not contest the suit and the parties filed a compromise conceding to the claim of Babu Lal. The State Government intervened and filed a petition in the High Court seeking a writ of certiorari, submitting that the entire proceedings in the suit were in contravention of Sub-section (6) of Section 165 of the M.P. Land Revenue Code, 1959. The judgment of the civil Court based on

compromise was sought to be quashed. The High Court dismissed the petition holding that the State could pursue the alternative remedy of filing a suit for declaration that the decree was null and void. In appeal by special leave, this Court set aside the judgment of the High Court and issued a writ of certiorari to quash the judgment and decree passed in the civil suit. It was held -- " One of the principles on which certiorari is issued is where the Court acts illegally and there is error on the face of record. If the Court usurps the jurisdiction, the record is corrected by certiorari. This case is a glaring instance of such violation of law. The High Court was in error in not issuing writ of certiorari. "

(underling by us).

20. The law laid down by this Court is an authority for the proposition that the Court shall step in and annul any such transaction as would have the effect of violating a provision of law, more so when it is a beneficial piece of social legislation. A simple declaratory decree passed by a civil court which had the effect of extinguishing the title of a member of a Schedule Tribe and vesting the same in a non-member, was construed as 'transfer' within the meaning of Section 165(6) of the M.P. Land Revenue Code, 1959. Thus, we are very clear in our minds that the expression 'transfer of immovable property' as defined in Clause (f) of para 2 of the 1956 Regulations has to be assigned a very wide meaning. Any transaction or dealing with immovable property which would have the effect of extinguishing title, possession or right to possess such property in a tribal and vesting the same in a non-tribal, would be included within the meaning of 'transfer of immovable property'.

21. In a series of decisions, the High Court of Madhya Pradesh has been consistently taking this view. To wit see Jagdish Vs. State of M.P. and Another, , Wajeram v. Kaniram , 1992 Rev.Nir. 270, Dinesh Kumar and Anr., v. State of Madhya Pradesh, 1995 Rev.Nir. 358.

22. What is adverse possession? Every possession is not, in law, adverse possession. Under Article 65 of the Limitation Act 1963, a suit for possession of immovable property or any interest therein based on title can be instituted within a period of 12 years calculated from the date when the possession of the defendant becomes adverse to the plaintiff. By virtue of Section 27 of the Limitation Act, at the determination of the period limited by the Act to any person for instituting a suit for possession of any property, his right to such property stands extinguished. The process of acquisition of title by adverse possession springs into action essentially by default or inaction of the owner. A person, though having no right to enter into possession of the property of someone else, does so and continues in possession setting up title in himself and adversely to the title of the owner, commences prescribing title into himself and such prescription having continued for a period of 12 years, he acquires title not on his own but on account of the default or inaction on part of the real owner, which stretched over a period of 12 years results into extinguishing of the latter's title. It is that extinguished title of the real owner which comes to vest in the

wrongdoer. The law does not intend to confer any premium on the wrong doing of a person in wrongful possession; it pronounces the penalty of extinction of title on the person who though entitled to assert his right and remove the wrong doer and re-enter into possession, has defaulted and remained inactive for a period of 12 years, which the law considers reasonable for attracting the said penalty. Inaction for a period of 12 years is treated by the Doctrine of Adverse Possession as evidence of the loss of desire on the part of the rightful owner to assert his ownership and reclaim possession.

23. The nature of the property, the nature of title vesting in the rightful owner, the kind of possession which the adverse possessor is exercising, are all relevant factors which enter into consideration for attracting applicability of the Doctrine of Adverse Possession. The right in the property ought to be one which is alienable and is capable of being acquired by the competitor. Adverse possession operates on an alienable right. The right stands alienated by operation of law, for it was capable of being alienated voluntarily and is sought to be recognized by doctrine of adverse possession as having been alienated involuntarily, by default and inaction on the part of the rightful claimant who knows actually or constructively of the wrongful acts of the competitor and yet sits idle. Such inaction or default in taking care of one's own rights over property is also capable of being called a manner of 'dealing' with one's property which results in extinguishing one's title in property and vesting the same in the wrong doer in possession of property and thus amounts to 'transfer of immovable property' in the wider sense assignable in the context of social welfare legislation enacted with the object of protecting a weaker section.

24. In AIR 1923 205 (Privy Council) , their Lordships of the Privy Council dealt with a case of Watan lands and observed that it is somewhat difficult to see how a stranger to a Watan can acquire a title by adverse possession for 12 years of lands, the alienation of which is, in the interests of the State, prohibited. The Privy Council's decision was noticed in AIR 1949 265 (Nagpur) and the High Court noted non-availability of any direct decision on the point and resorted to borrowing from analogy. It was held that title by adverse possession on Inam lands, Watan lands and Debutter, was incapable of acquisition.

25. Reverting back to the facts of the case at hand, we find that in the land, the ultimate ownership vests in the State on the principle of eminent domain. Tribals are conferred with a right to hold land, which right is inalienable in favour of non-tribals. It is clear that the law does not permit a right in immovable property vesting in a tribal to be transferred in favour of or acquired by a non-tribal, unless permitted by the previous sanction of a competent authority. The definition of 'transfer of immovable property' has been coined in the widest possible terms. The definition makes a reference to all known modes of transferring right, title and interest in immovable property and to make the definition exhaustive, conspicuously employs the expression - "any other dealing with such property", which would embrace within its sweep any other mode

having an impact on right, title or interest of the holder, causing it to cease in one and vest or accrue in another. The use of the word 'dealing' is suggestive of the legislative intent that not only a transfer as such but any dealing with such property (though such dealing may not in law, amount to transfer), is sought to be included within the meaning of the expression. Such 'dealing' may be a voluntary act on the part of the tribal or may amount to a 'dealing' because of the default or inaction of the tribal as a result of his ignorance, poverty or backwardness, which shall be presumed to have existed when the property of the tribal is taken possession of or otherwise appropriated or sought to be appropriated by a non-tribal. In other words, a default or inaction on the part of a tribal which results in deprivation or deterioration of his rights over immovable property would amount to 'dealing' by him with such property, and hence a transfer of immovable property. It is so because a tribal is considered by the legislature not to be capable of protecting his own immovable property. A provision has been made by para 3A of the 1956 Regulations for evicting any unauthorized occupant, by way of trespass or otherwise, of any immovable property of the member of the Scheduled Tribe, the steps in regard to which may be taken by the tribal or by any person interested therein or even suo motu by the competent authority. The concept of locus standi loses its significance. The State is the custodian and trustee of the immovable property of tribals and is enjoined to see that the tribal remains in possession of such property. No period of limitation is prescribed by para 3A. The prescription of the period of 12 years in Article 65 of the Limitation Act becomes irrelevant so far as the immovable property of a tribal is concerned. The tribal need not file a civil suit which, will be governed by law of limitation; it is enough if he or anyone on his behalf moves the State or the State itself moves into action to protect him and restores his property to him. To such an action neither Article 65 of Limitation Act nor Section 27 thereof would be attracted.

26. In our opinion, the above said shall be the position of law under the 1956 Regulations where 'transfer of immovable property' has been defined and also under the 1950 Act where 'transfer of holding' has not been defined. Acquisition of title in favour of a non-tribal by invoking the Doctrine of Adverse Possession over the immovable property belonging to a tribal, is prohibited by law and cannot be countenanced by the court.

27. The period upto 6.4.1964, during which the land belonged to the tribals, has to be excluded from calculating the period of limitation. Undoubtedly on 7.4.1964 the land having been sold by a tribal to a non-tribal with the previous permission of the sub-divisional officer, the possession of defendant-respondent No. 1 over the land on and from that date shall be treated as hostile. In the suit filed by the plaintiff-appellant in the year 1970 the period of limitation shall have to be calculated by reference to Article 65 of the Limitation Act. By that time only a period of 6 years i.e. between 1964 and 1970 had elapsed. The suit was not barred by limitation.

28. The learned counsel for the respondents relied heavily on Para 7-D of the 1956 Regulations and upon two decisions of the Orissa High Court rendered by reference thereto namely *Laxmi Gouda and Others Vs. Dandasi Goura* (deceased by L.R.) and *Others*, and *Madhia Nayak v. Arjuna Pradhan and Ors.*, 65 (1988) CLT 360. We have carefully perused both the decisions. The question which arose for decision therein was the effect of amendment made in Para 7-D of the Regulations and given a retrospective operation with effect from a back date. The High Court has held that if adverse possession extending over a period of 12 years had already stood perfected into acquisition of title before the date of the amendment, then the amended provision could not be read so as to extend the period of 12 years of acquisition of title by adverse possession substituted as 30 years even if such date fell after 2.10.1973, the date with which the amendment commenced operating. The question which is arising for decision before us namely whether a non-tribal can at all commence prescribing acquisition of title of adverse possession over the land belonging to a tribal and situated in a tribal area was neither raised before the High. Court nor decided by it. A judicial decision is an authority for what it actually decides and not for what can be read into it by implication or by assigning an assumed intention to the Judges, and inferring from it a proposition of law which the Judges have not specifically laid down in the pronouncement. Still we make it clear that the provisions of Para 7-D of the Regulations are to be read in the light of the principle which we have laid down hereinabove. A tribal may acquire title by adverse possession over the immovable property of another tribal by reference to Para 7-D of the Regulations read with Article 65 and Section 27 of the Limitation Act, 1963, but a non-tribal can neither prescribe nor acquire title by adverse possession over the property belonging to a tribal as the same is specifically prohibited by a special law promulgated by the State legislature or the Governor in exercise of the power conferred in that regard by the Constitution of India, A general law cannot defeat the provisions of a special law to the extent to which they are in conflict; else an effort has to be made at reconciling the two provisions by homogenous reading.

29. Having held that the wrongful possession of the defendant-respondent No. 1 over the land purchased by the plaintiff-appellant has not ripened into acquisition of title by adverse possession, the next question which arises for decision is in relation to the appropriate relief which should be allowed to the plaintiff-appellant. There was a controversy before the trial court as to the exact extent of land and of encroachment on the property belonging to the plaintiff-appellant by the defendant-respondent, as the two properties are adjoining. The plaintiff-appellant relied on the report of Amin while the trial court had also got a survey conducted by a local commissioner who had filed his report. The High Court has not recorded any specific finding thereon because of the view taken by it on the plea of adverse possession, resulting in dismissal of the suit.

30. The other question which arises is as to the construction made by defendant-respondent. No. 1 over the property of the plaintiff-appellant encroached upon by defendant-respondent No. 1. During the course of hearing, it was submitted by

the learned counsel for defendant-respondent No. 1 that huge construction, has come up over the property in suit, while according to the plaintiff-appellant some construction, rather a major portion thereof, has taken place during the pendency of the appeal in this Court as no interim relief was granted by the Court though it was prayed for by the plaintiff-appellant.

31. On these two aspects the case needs to be remanded to the trial court for the ends of justice and determination of appropriate relief. We propose to make suitable directions in this regard in the operative part of the judgment.

32. The appeal is allowed. The judgment of the High Court is set aside. The case is remanded to the trial court for decision in accordance with the following directions:-

(1) The trial court shall find if an undisputed or proved map of the land belonging to the plaintiff-appellant demarcating the area encroached upon by defendant-respondent No. 1 is available on record, and if so, the same shall be accepted and made a part of the decree; if not, the trial court shall appoint an Advocate-Commissioner assisted by a person proficient in survey to draw up a map of the plaintiff-appellant's land and demarcate specifically therein the area encroached upon by defendant-respondent No. 1.

(2) The trial court shall determine, after hearing the learned counsel for the parties and if necessary by recording additional evidence, whether a decree for demolition of the construction, made by defendant-respondent No. 1, and specific restoration of possession to the plaintiff-appellant is called for. In the alternative, the trial court shall determine if, in spite of the encroachment having been proved, a decree for the award of suitable compensation in lieu of demolition and restoration of possession would be a more appropriate relief.

(3) In the event of the trial court forming an opinion in favour of awarding compensation the same shall be assessed by reference to the date of this judgment. The payment of compensation, as quantified by the trial court, shall be a condition precedent for condoning the encroachment and unauthorized construction of the defendant-respondent No. 1.

33. The trial court shall dispose of the suit, consistently with the terms of this judgment expeditiously and in any case within a period of six months from the date of the communication of this judgment.

34. The costs incurred in the High Court and this Court shall be borne by defendant-respondent No. 1. The costs incurred in the trial court shall be in the discretion of the trial court.