
(2008) 04 RAJ CK 0108
In the Rajasthan High Court

Chhail Singh and Others

APPELLANT

Vs

State of Raj and Others

RESPONDENT

Date of Decision : 17-04-2008

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 42(b)

Citation : (2008) 04 RAJ CK 0108

Hon'ble Judges : N.P. Gupta, J;Kishan Swaroop Chaudhari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.P. Gupta, J.—This appeal has been filed by the appellants, who are ultimate transferees against the judgment of the learned Single Judge dt. 10.3.2008, dismissing the writ petition, thereby upholding the order of the Board of Revenue Annexure-11 dt. 12.3.1999, whereby the learned Board of Revenue had accepted the reference made by the Collector, Jalore, vide order dt. 17.8.1998, making reference to the effect, that the judgment dt. 30.7.1969 passed by the Assistant Collector, Jalore in Suit No. 4/69 is violative of the provisions of Section 42(b) of the Rajasthan Tenancy Act, 1955, hereafter to be referred to as the Act of 1955. According to which the land of Scheduled Caste has been mutated in favour of a person not belonging to Scheduled Caste, and recommended for restoration of the land in favour of the original Khatedars, being the Scheduled Caste persons, who are legal representatives of Padamiya Bhambhi.

2. The brief facts of the case, as appearing from the documents annexed with the writ petition, are, that on 13.2.1969 one Guman Singh Rajput r/o Moodi, Tehsil Jalore filed a suit against one Padamiya s/o Jeeva Bhambhi r/o Paharpura Tehsil Jalore in the Court of Assistant Collector, Jalore u/s 88-89 of the Rajasthan Tenancy Act, alleging inter alia, that the land bearing Khasra No. 175 measuring 19 bigha 18 biswas situate in village Moodi, hereafter to be referred to as the land in question, was in Khudkasht of the plaintiff since time immemorial, including at the time of settlement. However, since the defendant was Hali of the

plaintiff, and was working as such, therefore, either by mistake of settlement, or by collusion, in Parcha Lagan, instead of name of the plaintiff, name of the defendant was entered, which is wrong. Then, it was alleged, that at the time of settlement the defendant was only a paid servant of the plaintiff, and was cultivating as such, and the Girdawari went on being recorded in the name of the defendants so long as the defendant continued to cultivate. Thereafter, it started being recorded in the name of the plaintiff, and the land Revenue is being paid by the plaintiff. It is then alleged, that the defendant is a resident of Paharpura, and for the last 4-5 years he has left the job, and went away to Paharpura, and as such the plaintiff is cultivating the land. With this, it is alleged, that on 22.7.1968, when it rained, the plaintiff went to cultivate, the defendant threatened, contending that the land is in his Khatedari, and therefore, the plaintiff could not cultivate. This is said to be the cause of action. On these pleadings it was prayed, that the plaintiff be declared as Khatedar of the land in question, necessary changes in the revenue records be ordered to be made, and injunction be granted against the defendant, not to interfere with the plaintiff's possession. It appears, that the suit proceeded ex-parte, and the plaintiff led some oral evidence, deposing about his possession, and also deposing about the defendant being Hali for some 2-3 years only, and having not remained Hali after settlement. Likewise some more oral evidence was also led about plaintiff's cultivation. The learned Assistant Collector vide judgment dt. 30.7.1969, cataloging the plaintiff's evidence, decreed the plaintiff's suit, holding that there is no doubt about the plaintiff's old possession since settlement, and a decree was granted, to the effect, that the plaintiff is a Khatedar of the land in question.

3. Immediately thereafter i.e. on 13.8.1969 the land in question was sold by the plaintiff Guman Singh to Mehrab Khan s/o Raju Khan, who in turn again sold it on 27.4.1988 to Aas Kanwar w/o Bhanwaroo Khan, Allarakh Kanwar w/o Rehmat Ali, and Rustom Ali s/o Rehmat Ali.

4. Since the land was recorded earlier in the name of Padamiya, a member belonging to Scheduled Caste, his legal representatives filed an application before the Collector in the year 1994, contending inter alia, that the land in question is their ancestral land, and is of their Khatedari, and since Padamiya is a member of Scheduled Caste, his Khatedari rights could not be interfered, nor any judgment or decree could be passed in that regard. With this it was alleged, that recently the non-petitioners No. 7, 8 and 9 therein, i.e. being Aaskanwar, Allarakh, Rustom Alia, have started illegally harassing them, and raising demand for money, on the pretext of the land being of their Khatedari. It is alleged, that on enquiry it transpired that Guman Singh fraudulently obtained a decree against Padamiya on 30.7.1969, which decree is in violation of the provisions of Section 42 of the Act of 1955, and is therefore, liable to be set aside by way of proceedings of reference. It is also alleged that Padamiya was ancestral tenant of the land in question, at the time of first settlement, as well as at the time of Jagir resumption, Padamiya was cultivating the land, and thus Padamiya legally became Khatedar tenant.

5. On this application, notices were issued, and the non-petitioners No. 7 to 9 submitted, that they have already sold the land in question on 20.10.1996, i.e. during pendency of the reference proceedings to Chhail Singh, Dalpat Singh, Keshar Singh, Padam Singh, and Gulab Devi (the present writ petitioners and appellant), whereupon these persons were also issued notices, who appeared and contested the application. The learned Collector, in the judgment making reference, being Annexure-10 in the writ petition, interalia noticed the contentions of the applicant, that there is no material on record to show that Guman Singh was the tenant, and even Guman Singh himself has not deposed to be Khatedar tenant, the applicants have produced Girdawari, starting from first settlement of Samvat 2004, showing the land to be in their possession. It was also noticed, that after the judgment of the Assistant Collector, even before the mutation, and just after 15 days, Guman Singh had sold the land in favour of close relations of the Patwari Rehmat Ali. It was also considered, that at the time of first settlement, the Parcha Lagan was issued by the Jagirdar himself, which would not have been if Guman Singh was having any right, title, or interest in the land. The non-petitioners contested the reference application, interalia on the ground of delay, the judgment having been passed by a competent court after hearing, developments having been made on the land, and therefore, the reference application being not maintainable, in view of various judgments of the High Court.

6. The learned Collector after hearing the parties held, that from the record available, it is clear, that the land in question was recorded in the name of Padamiya, in the first settlement from Samvat 2004 onwards Padamiya was recorded as Khatedar, and continued to remain Khatedar till 31.8.1969. Then, it was noticed, that the suit was filed on 3.2.1969, and was decided on 30.7.1969, the mutation proceedings were initiated on 16.8.1969, and was sanctioned by the Up Sarpanch on 31.8.1969, in favour of Mehrab Khan noticing the factum of sale dt. 13.8.1969. Then, further mutations had been sanctioned consequent upon sale. With this it was found, that since on the record it is clear that since first settlement the land continued to be recorded in the name of Padamiya Bhambhi, a member of Scheduled Caste, and the learned Assistant Collector has passed the judgment for recording the land in favour of a person not belonging to Scheduled Caste, which is violative of Section 42(b) of the Act of 1955. It was additionally considered, that the learned Assistant Collector has only passed the judgment, and no decree has been ordered, or issued, and even without decree the mutation has been sanctioned, which is also bad, and thus reference was made as above.

7. The learned Board of Revenue after hearing the parties, vide judgment Annexure-11, a very brief order, noticed that reference has been made with the background, that the judgment passed is illegal, as no Khatedari can be claimed, or given in the land held by member of Scheduled Caste, and then it was found, that the judgment of Assistant Collector dt. 30.7.1969 is in flagrant violation of Section 42(b) of the Act of 1955. Consequently the judgment of the Assistant

Collector, and the mutation, both, were set aside by accepting the reference.

8. Aggrieved of this, a writ petition was filed before this Court, interalia on the ground, that the power u/s 42(b) was introduced in 1956 only, and then further amendment were made in 1964, whereby the transfers were enacted to be void, while prior to 1964 the transfers were only voidable. With this it is contended, that Guman Singh was in possession of the land at least from Samvat 2010 onwards, which is not hit by the provisions of Section 42 (b), and it has been found by the Assistant Collector in the judgment dt. 30.7.1969, that Guman Singh was in possession before settlement, and therefore, reference could not have been accepted. The other ground taken is, that in Section 232 amendment was made in 1981 only, permitting reference to be made against a decree passed, with the result, that the decrees passed prior to this amendment of 1981 could not be made subject matter of reference, and as in the present case such decree was passed in 1969, reference could not be made. Then, the other ground taken is of delay in making reference.

9. Interalia also contending, that no appeal was filed against the decree, and even the State did not choose to make any application before the Collector, even in the year 1994, and Padamiya or his L.Rs. did not have any right to file such application. Interalia with this it was prayed that the orders be set aside.

10. Reply to the writ petition was filed on behalf of legal representatives of Padamiya, taking various pleas.

11. However, the learned Single Judge, vide impugned order dismissed the writ petition, interalia on the ground, that the very foundation, on the basis of which the writ petitioners are claiming land, is on the basis of the judgment obtained by Guman Singh, a person not belonging to Scheduled Caste or Scheduled Tribe, on the basis of his alleged possession over the land in question since before settlement. However, no revenue record showing his possession or entry of his name was produced before the trial court, the said suit proceeded ex-parte, and merely on oral statement of the witnesses the suit has been decreed. It was also held, that no decree appears to have been passed, as no such decree has been placed on record.

12. Then, the order of reference was relied upon, which showed, that the judgment of the learned S.D.O. was a collusive decree, and that, the revenue record clearly recorded name of the defendants Padmiya right from Samwat year 2004 onwards, and Padmiya did not even come to know of this decree or mutation entries, deleting his name, and recording the name of Guman Singh, who immediately after decree has transferred the land to Mehrab Khan, which casts a serious doubt on the whole proceedings initiated by Guman Singh, and change of mutation entries in the revenue record. Apart from the fact that the mutation entries were recorded by a person without any authority, viz. Up Sarpanch, and with this it was found, that the Collector was justified in making reference, upon coming to know of all these facts. It has been observed, that the

very purpose of Section 232 of the Act is, to see that no such collusive decrees, or void sale transactions, deprive under privileged section of society, or persons belonging to Scheduled Caste or Scheduled Tribe, of their land and right over the agricultural land, in such a manner. Then, regarding delay it was held, that if merely passage of time is held up as a bar against such persons of weaker section, it would make mockery of the provisions of Section 232 of the Act, and that, the fact that land in question has changed three hands from one to another, belonging to persons other than the persons of Scheduled Caste does not validate, or add strength, to the lack of foundation, which these transactions had. Therefore, it was found, that the reference was rightly accepted.

13. Assailing the impugned judgment, learned Counsel for the appellant straightway placed reliance on various judgments, to contend, that the impugned judgment, order of reference, and acceptance of reference are bad. Relying upon judgment of this Court, in *Lad Bai v. Board of Revenue* reported in 2000(1) RLR 123, it was contended, that Section 42(b) is not attracted in cases where the land belonging to the Scheduled Caste is transferred in favour of non scheduled caste person in execution of the decree passed by the Subordinate Revenue Court, as Section 42 takes within its comprehension the transfers made by way of sale, gift or bequest, while the decree is not a sale, gift or bequest, and therefore, making of the reference itself was illegal and bad. This judgment was also relied upon for contending, that although the Collector has unlimited power to call for and examine the record for making reference, and no limitation is prescribed, but this power is to be exercised within reasonable time. In that case the reference was made after 18 years, which was found to be an excessive exercise of jurisdiction, and the order was quashed. It was contended, that in view of this judgment, if the learned Single Judge was not inclined to agree with this view, then the only course open to the learned Single Judge was, to have made a reference to the larger Bench, but instead the learned Single Judge though was kind enough to notice the fact at page-5, that this judgment was relied upon by the appellant, but has neither read it, nor has even distinguished it on any ground, and has taken a contrary view. Then, the learned Counsel relied upon another Single Bench judgment of this Court, in *Bhuri Singh v. State of Rajasthan* reported in 2007(1) RRT 717, wherein it was held, that in absence of any allegation of obtaining decree by fraud, the reference made after inordinate delay of 25 years was held to be illegal, and void. In this judgment the earlier judgment in *State of Rajasthan v. Teja Ram* reported in 2005(1) DNJ (Raj.) 162, and *Lad Bai's* case have been relied upon. Likewise reliance has also been placed on a Division Bench judgment of this Court, in *Anandi Lal v. State of Rajasthan* reported in 1996 (1) DNJ (Raj.)100, wherein also it was held, that reference cannot be made after unreasonable delay. Then, the learned Counsel relied upon a Division Bench judgment of this Court, in *Hanja Ram and Ors. v. State of Rajasthan* reported in 2006(7) RDD 3818 (Raj.), wherein since power of reference was exercised after inordinate delay of 20 years, exercise of power was held to be not sustainable. Then, reliance was placed on a judgment of Hon''ble

the Supreme Court, in *Situ Sahu and Ors. v. State of Rajasthan* reported in 2005(1) RRT 161, wherein it was held, that the power exercisable u/s 71A of the Chota Nagpur Tenancy Act, which permits the power to be exercised "at any time" was also held to mean, within reasonable time, and in that case the power was exercised after 40 years, which was found to be unreasonable, and by allowing the appeal the order of restoration made in favour of Scheduled Caste persons was set aside. Then, the learned Counsel relied upon Division Bench judgment of this Court, in *State of Rajasthan v. Teja and Ors.* reported in 2005(1) DNJ (Raj.) 162, wherein relying upon judgment in *Anandi Lal's* case reference made after 13 years by Assistant Collector was set aside, after noticing, that the Collector had not recorded any reason, to the effect that illegality in the transfer was a consequence between public officer and private party, and did not suffer any public laws. Then, the learned Counsel relied upon judgment of Hon''ble the Supreme Court, in *Nathu Ram (dead) by Lrs. v. State of Rajasthan* reported in 2006(1) RRT 383 to contend, that in such circumstances proceedings u/s 175(4) is the only remedy, and reference cannot be made after such a long time. Then, reliance was placed on the judgment of Hon''ble the Supreme Court, in *State of Gujarat and Another Vs. Patel Ramjibhai Danabhai and Others*, to contend, that since Section 232 is a general provision, and Section 175 is a special provision, Section 232 has to yield to Section 175, and in the present case, since neither any action has been taken u/s 175, nor the limitation for taking action u/s 175 survived, therefore, the reference could not be made. Then, reliance was also made to judgment of Hon''ble the Supreme Court, in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, to contend, that the reasons spelt out by the learned Single Judge, being not part of the judgment, and taken into consideration by the learned Collector, could not be considered. Reliance was also placed on the judgments of Hon''ble the Supreme Court, in *Keshabo and Others Vs. State of M.P. and Others*, , and *Guntaiah and Others Vs. Hambamma and Others*,

14. On the other hand, learned Counsel for the legal representatives of Padamiya contended, that Padamiya was in possession since long, and in 2004 Parcha Lagan had also been issued in his name by Jagirdar, and his name was recorded in the settlement, which settlement took some where in Samvat 2008-09, and this suit had been filed in the year 1969, and thus the ground of delay rather works against the appellant. Then, regarding *Lad Bai's* case, it was submitted, that in para-8 thereof, a positive finding has been recorded by this Court, about decree being not collusive or fraudulent, and therefore, the whole thrust of the judgment was on merits of the decree, and observations made about delay, are only obiter. Then, in *Hanja Ram's* case learned Counsel relied upon para-12, wherein a finding was recorded, to the effect, that there is nothing to suggest, that the decree was out come of coercion or misrepresentation, and that, even the objectors did not say that the objections made in the pleadings were not earnestly made by their predecessors, and thus, it was found, that the decree cannot be said to be liable to be excluded, or void ab-initio. Then, the learned

Counsel relied upon Full Bench judgment of this Court, in *Chiman Lal v. State of Rajasthan and Ors.* reported in 2000(1) WLN 207, wherein the Full Bench has expressly over-ruled the Division Bench judgment in *Anandi Lal's case*, in para-26. Then, the learned Counsel relied upon judgment in *Chinde Gowda v. Puttamma* reported in AIR 2008 SCW268. Then, the learned Counsel relied upon Division Bench judgment of this Court, in *Mangi Lal and Others Vs. State of Rajasthan and Others*, to contend, that there is no time limit prescribed for reference, and as such power of reference is to be exercised within a reasonable time, and what reasonable time is, can be determined on the facts and circumstances of each case, and that, if the impugned order has been obtained by fraud, the power of reference can be exercised even after inordinate or unreasonable delay. That was a case where Khatedari rights were claimed to have been acquired of the land, which was in the name of idol, the perpetual minor, by the Pujari, by playing fraud. Then, the learned Counsel relied upon another three Judges Bench judgment of Hon"ble the Supreme Court, in *Uttam Namdeo Mahale Vs. Vithal Deo and others*, , wherein it has been held, that in absence of any specific limitation provided u/s 21 of the Mamlatdar's Court Act, necessary implication is, that the general law of limitation by the Limitation Act stands excluded, and since no limitation has been prescribed, the order can be executed at any time, and that, where there is no statutory rule operating in the field, implied power of exercise of right within reasonable time does not arise.

15. Then, reliance was sought to be placed on the judgment of Hon"ble the Supreme Court, in *T. Vijendradas and Another Vs. M. Subramanian and Others*, , which need not detain me, inasmuch as that judgment deals only with the proposition about the consequences of fraud. Learned Counsel then relied upon a Constitutional Bench judgment of Hon"ble the Supreme Court, in *S.C. Prashar, Income Tax Officer, Market Ward, Bombay and Another Vs. Vasantsen Dwarkadas and Others*, to contend, that where the word used is "any time", then it means that there is no limitation whatever. Then, it was contended that Section 175 of the Tenancy Act is not at all attracted in the circumstances of the case, because it is not a case of illegal transfer or illegal subletting, and therefore, the only proper remedy was u/s 232, of making reference. Then, the learned Counsel also relied upon a Single Bench judgment of this Court, in *Haja v. Board of Revenue* reported in 1999(2) WLN 89, wherein it has been held, that where the transaction is in violation of Section 42 (b), the Collector has power to make reference u/s 232, and since the power to make reference regarding decree was introduced only in 1981, if the applicant approached the Collector in 1986, it cannot be said to be delayed. Likewise, reliance was also placed on the judgment of this Court, in *Jagan Nath v. The Board of Revenue for Rajasthan, Ajmer and Anr.* reported in 1999(2) WLN 694.

16. In rejoinder, learned Counsel for the appellant reiterated, that Section 42 comprehends within its mischief only sale, gift, or bequest, and not the decree. Likewise, Section 43 and 49 are also silent about decree, as such, on the mutation effected consequent upon decree of competent revenue court,

reference cannot be made. It is also contended, that it is established principle of Interpretation of Statutes, that where the words of statute are plain and clear, the words cannot be added to it, and therefore, the word "decree" cannot be allowed to be added, so as to attract the power of reference, in cases where mutation is effected consequent upon decree in favour of a person not belonging to scheduled caste, person with respect to land belonging to scheduled caste person.

17. We have considered the submissions, and have gone through various judgments cited at the Bar, documents available on record, and the relevant provisions of Rajasthan Tenancy Act, including Section 42, 43, 49A, 232 and 175.

18. First of all, we take up the contention based on the judgment of Lad Bai's case, about the learned Single Judge being not entitled to take a contrary view, so as to include the expression "decree" in Section 42(b), as in Lad Bai's case it has been held, that where transfer is made by decree, it is not a sale, gift or bequest, as envisaged by Section 42(b).

19. Before proceeding to deal with this contention of the appellant we are constrained to observe, that a perusal of the impugned judgment of the learned Single Judge shows, that the learned Single Judge has simply cataloged the judgments cited on either side, and has then proceeded to decide the matter on the basis of his own philosophy, without discussing the relevant bearing of the various judgments cited at the bar, which course of action, we are not in a position to approve. It is expected, that if judgments are cited at the bar, they are required to be considered, their bearing on the controversy involved is required to be considered, and then, appropriate conclusion is required to be arrived at.

20. A look at Lad Bai's case shows, that therein a judgment of this Court in Balu v. Birda reported in 1983 RRD159 was relied upon, and a look at the judgment in Lad Bai's case shows, that in para-6, the learned Single Judge has referred to that judgment, as a decision given by the Board of Revenue reported in 1983 RRD159, while as a matter of fact, a look at the judgment shows, that that is a judgment rendered by Hon'ble Justice Shri G.M. Lodha, a Judge of the High Court, as His Lordship then was, and is not a judgment rendered by the Board of Revenue. Then Lad Bai's case proceeds to hold, that that judgment is per incuriam, inasmuch as in para-12 it has been held, that the legislature need not think it fit to cover decrees of court of competent jurisdiction which may have the result of transfer of land of Khatedar tenant, and to read the words a decree of court of competent jurisdiction in Section 42 is to read something more in that section, than that has been put by the legislator. Such judicial activism in my opinion is impermissible in law. The language of Section 42 does not permit such violent interpretation, and therefore, the said judgment is per incuriam of Section 42, and not binding on learned Single Judge. As against this, a look at the judgment Balu's case shows, that the learned Single Judge did consider the controversy from para-8 onwards, because that was also a case where the

question arose, on the basis of a decree, and the Court proceeded to start the judgment, formulating the question, as to whether protective umbrella is aimed to implement the socio economic uplift of Scheduled Caste, Scheduled Tribe, by prohibiting transfer of land by them, so that they retain the land, be nullified, and set at naught, by ingenious legal trickery of affluent and resourceful segment of society, by obtaining compromise decrees, surrendering the land to non scheduled caste? When a landless tiller Harijan or Girijan again becomes landless by compromise, would the law permit such economic suicide by Harijans, against legislative intent of Section 42, is the pivot of debate in this Harijan's legislation? Then, the facts were narrated, and in para-8 onwards it was held, that if there had been a transfer, as contemplated by Section 42, it was void, and cannot be made effective. Then, in para-9 a question has been posed, as to whether such a transfer amounts to sell, bequest, gift or other conveyance of property, as contemplated by the Transfer of Property Act, and it was held as under:

In my opinion, the provisions of Section 42 have been enacted for prohibiting transfer of agricultural land from Scheduled Caste to Non Scheduled caste, on the ground that Scheduled caste and Scheduled Tribe are the weaker sections of Society and if protection is not given, the other affluent members of Society would EXPLOIT them. This is Socio-Economic Legislation to ameliorate the condition of down trodden, depressed and suppressed segment of society, who are weaker financially, economically, socially and also in education.

21. Then, in para-10 it was held as under:

10. It is, therefore, necessary that broad, liberal interpretation should be made to the word, "Transfer" used in this proviso and all direct or indirect methods of transferring property should be considered to be hit by the prohibition, contained in Section 42. In that context and background, the sale or bequest would be void. The parties manipulate compromises in civil suits and Revenue suits and both the parties went to change the property from one person to other person. Can it not be said that it was a transfer for the purpose of Section 42 as surrender can only be made u/s 55 of the Rajasthan Tenancy Act? Broadly speaking. I am of the opinion that the word, "transfer" used in the proviso to Section 42 should be treated as comprehensive and even if an agricultural land in Khatedari of Scheduled caste and Scheduled Tribe, by compromise in a suit, then also it would come within the mischief of prohibited transfer u/s 42 of the Rajasthan Tenancy Act. Even a contested decree resulting in transfer would be covered by the protective Umbrella of Section 42 of the Act.

22. Thus, a bare reading of judgment in Balu's case shows, that the learned Single Judge of this Court was not unaware of the language of Section 42, and after undertaking a survey of philosophy, consciously interpreted the provision, and held, that the provision requires a liberal interpretation, so as to cover all direct and indirect methods of transferring the property, to be hit by the provisions of Section 42. In that view of the matter, to say the least, it cannot be said, that the judgment in Balu's case is per incuriam. May be, that in Lad Bai's

case the learned Single Judge may not inclined to concur with the judgment in Balu's case, but then, in that event, the only course open to the learned Single Judge was, to refer the matter to the larger Bench, instead of adopting the unavailable course of holding that judgment to be per incuriam. In that view of the matter, in our view, on the face of the judgment in Balu's case, Lad Bai's case wherein Balu's case has been held to be per incuriam cannot be said to be a good law. We are conscious of the fact, that learned Counsel for either side have not cited any other judgment of this Court, taking any view either ways, on the question, as to whether the transfer, indirectly coming into existence, of the land of Scheduled Caste or Scheduled Tribe, in favour of person not so belong to Scheduled Caste or Scheduled Tribe, including one by way of decree, would be hit by the provisions of Section 42, or not. In that view of the matter, in our view, the law laid down by the learned Single Judge in Balu's case does very much hold good, and even if a transfer comes about, consequent upon a decree whether ex-parte, or contested, or fraudulent, is also hit by the prohibition enacted by Section 42, and consequently would attract the power of reference.

23. This is one aspect of the matter. The other aspect of the matter is, that in forthcoming paragraphs we shall be referring to later Supreme Court judgments, wherein also this very philosophy, as propounded in Balu's case, has been propounded, including those in Sanjay Dinkar Asarkar Vs. State of Maharashtra and Another, Pandey Orson Vs. Ram Chander Sahu and others, AIR 1977 1718 (SC) , and many more such judgments, including latest judgment in Amrendra Pratap Singh v. Tej Bahadur Prajapati reported in AIR 2004 SCW 4103. In that view of the matter, the contention of the learned Counsel for the appellant, from both the stand point i.e. the learned Single Judge, on the face of the judgment in Lad Bai's case should have referred the matter to the larger Bench, so also that the transfer coming about consequent upon a decree of a competent court is not hit by the prohibition of Section 42, are negated.

24. Then, we take up the contention raised by the learned Counsel for the appellant, that in view of the provisions of Section 232 being general provision, while Section 175 being special provision, the only remedy which could be availed was one u/s 175. We may gainfully quote at this place the provisions of Section 175 as well as Section 232 which read as under:

175. Ejectment for illegal transfer or sub-letting. - (1) If a tenant transfers or sublets, the whole or any part of his holding otherwise than in accordance with the provisions of this Act and the transferee or sublessee has entered upon or is in possession of such holding or such part in pursuance of such transfer or sublease, both the tenant and any person who may have thus obtained or may thus be in possession of the holding or any part of the holding, shall on the application of the land holder, be liable to ejectment from the area so transferred or sublet.

(2) To every application under this section, the transferee or the subtenant, as the case may be, shall be joined as a party.

(3) On an application being made under this section, the court shall issue a notice to the opposite party to appear within such time as may be specified therein and show cause why he should not be ejected from the area so transferred or sublet.

(4A) Notwithstanding anything to the contrary contained in Sub-section (4) if the application is in respect of contravention of the provisions contained in Clause (b) of Section 42 or the proviso to Sub-section (2) of Section 43 or Section 43A, or Section 49A the court shall after giving a reasonable opportunity to the parties of being heard conclude the enquiry in a summary manner and pass order, as far as may be practicable within a period of three months from the date of the appearance of the non-applicants before it directing ejectment of the tenant and his transferee or sub-lessee from the area transferred or sublet in contravention of the said provisions.

232. Power to call for record and refer to the Board-The Collector may call for and examine the record of any case or proceeding decided by or pending before any revenue court subordinate to him for the purpose of satisfying himself as to the legality or propriety of the order or decree passed and as to the regularity of the proceeding, and if he is of opinion that the order or decree passed or the proceeding taken by such court should be varied, cancelled or reversed he shall refer the case with his opinion thereon for the orders of the Board and the Board shall, thereupon, pass such orders as it thinks fit ;

Provided that the power conferred by this section shall not be exercised in respect of suits or proceedings falling within the purview of Section 239.

25. At this place we may recapitulate, that the contention has been raised, wholly, or in any case substantially, on the basis of the judgment of Hon'ble the Supreme Court in Nathu Ram's case, which was a case arising from State of Rajasthan itself. A look at the judgment in Nathu Ram's case shows, that in that case the proceedings commenced on the application filed u/s 175 itself, for restoration of possession, and the question of limitation was also raised therein, and in that context, the applicability of Section 175, the effect of limitation etc., were decided therein, but then, even after repeatedly reading that judgment, we are not able to find any contention to have been raised therein, on the anvil of applicability of Section 175, to the exclusion of bar of Section 232. In that view of the matter, the judgment in Nathu Ram's case cannot be said to be judgment, or authority, for the proposition, that in cases where transactions are hit by Section 42, the only remedy available is one u/s 175. Then, another judgment relied upon in this regard is, State of Gujarat v. Patel Ramjibhai Danabhai's case. That is a case regarding the proposition of special provision excluding applicability of general provision, and is a judgment rendered in connection with taxing statute, being Bombay Sales Tax Act. The abstract legal proposition is not in dispute, but here, a look at the provisions of two sections does clearly show, that they operate in a different field altogether, and there is nothing like one being general provision, and other being special provision, so as to invoke the

principle. Section 175 is a provision for ejectment, on account of illegal transfer or subletting, and under this section after following the procedure prescribed therein, and on the conditions prescribed therein being fulfilled, the transferee and the transferor are both liable to ejectment, and the land stands resumed to the State, while Section 232 empowers the Collector to call for and examine the record of any case or proceedings decided, by or pending before any revenue court subordinate to him, for the purpose of satisfying himself as to the legality or propriety of the order, and as to the regularity of the proceeding, and if he is of opinion, that the order or decree passed or proceedings taken by the court should be varied, cancelled or reversed, the matter is required to be referred to the Board. Thus, there is no conflict between Section 175 and Section 232. Consequently, it cannot be said, that in view of the provisions of Section 175 the authorities below could not proceed u/s 232.

26. After dealing with the contentions as above, in our view, the only other contention which has been submitted, in many ways, and sought to be supported by many judgments, can be summarised to be only to the effect, that since the decree is of the year 1969, the proceedings could not be initiated in the year 1994 i.e. after 25 years. We, therefore, now deal with this contention, as to whether the reference could be made at this belated hour, as a legal proposition, and/or in the facts and circumstances of the case.

27. In this regard again we may refer to the cases cited by the learned Counsel for either side, as cataloged above, and on going through these judgments, what we gather is, that in none of these judgments cited on the side of the learned Counsel for the appellant, it has precisely been laid down, as to within what period of time reference can be made, on the face of absence of any provision for time limit enacted in Section 232, except the judgments holding, that it could be made only within a reasonable time, it cannot be made after unreasonable delay, and so on. Strongest judgments relied upon in this regard are the judgment in Anandi Lal's case and Situ Sahu's case. Of course, in some of the judgments relied upon by the learned Counsel for the respondent, including those in Uttam Namdeo Mahale Vs. Vithal Deo and others, , and S.C. Prashar's case, a view has been taken, that in absence of period of limitation being prescribed, action can be taken at any point of time. All other judgments practically uniformly take a view, that reference can be made within a reasonable time. So far this Court is concerned, the matter can be said to have to be resting settled by the Full Bench judgment in Chiman Lal" case, wherein Anandi Lal's judgment has been expressly over-ruled, and even in Chiman Lal's case it has been held, that the power has to be exercised within reasonable period, but then in Chiman Lal's case in para-25, certain more guidelines have been laid down. We may gainfully quote para-25, which reads as under:

25. In view of the above discussion, we are of the opinion that it is not the function of the court to prescribe the limitation where the legislature in its wisdom had thought it fit not to prescribe any period. As held by the Supreme

Court in Ajaib Singh's case (supra) the Courts only interpret law and do not make laws. Personal view of the Judges presiding the court cannot be stretched to authorise them to interpret law in such a manner which would amount to legislation intentionally left over by the legislature. Hence, we are of the opinion that when no period of limitation under Rule 272 of the Rules 1961 is prescribed by the legislature then we cannot prescribe any period of limitation that in what time the revisional powers can be exercised by the authority under Rule 272 of the 1961 Rules. When no period of limitation is provided then in our opinion the same has to be exercised within a reasonable time and that will depend upon facts and circumstances of each case like; (i) when there is fraud played by the parties; (ii) the orders are obtained by mis-representation or collusion with public officers by the private parties; (iii) Orders are against the public interest; (iv) the orders are passed by the authorities who have no jurisdiction; (v) the orders are passed in clear violation of rules or the provisions of the Act by the authorities; and (vi) Void orders or the orders are void ab initio being against the public policy or otherwise. The common law doctrine of public policy can be enforced wherever an action affect/offends the public interest or where harmful result of permitting the injury to the public at large is evident. In such type of cases, revisional powers can be exercised by the authority at any time either suo moto or as and when such orders are brought to their notice.

28. So far the judgments in S.C. Prashar's case and Situ Sahu's case are concerned, they are under different legislations, and under different scheme of things, and therefore, they cannot be taken to be laying down a universal rule, to the effect, that in any law, or in any proceedings, wherever limitation is not prescribed, the action can be taken at any belated point of time. The judgment in S.C. Prashar's is a cases under Income Tax Act, while the case in Situ Sahu's case is a case of execution of any order. Thus taking an over all conspectus of the things, we are also of the view in line with Chiman Lal's case, that the power is to be exercised within reasonable time, and what would be reasonable period, does obviously depend upon facts and circumstances of each case, including some of the instances enumerated in para-25 of Chiman Lal's case, and one of the considerations laid down in Chiman Lal's case is, "orders are against the public interest", and second "orders are void ab-initio being against the public policy or otherwise".

29. In this background, if the case in hand is concerned, taking the things from the stand point of calendar, or statistics, of course the decree of the learned Assistant Collector is of 1969, and the application for reference has been made on 2.6.1994 i.e. after little less than 25 years, but then, what is significant to note is, that the theory propounded by the plaintiff Guman Singh, as appearing from the plaint, and as appearing from his statement, produced as Annexure-2, if read together, do clearly demonstrate, the whole story of the plaintiff to be false, inasmuch as according to plaint Padamiya was his Hali, and was working as such at the time of settlement, the Girdawari went on being recorded in his name, and subsequently it was recorded in the name of the plaintiff, and then it

was alleged, that for the last 4-5 years (before 1969), he left the village, and went to his own village Paharpura, and since then he was peacefully cultivating the land, and it was on 22.7.1968, that the defendant obstructed the plaintiff, which is said to be the cause of action. As against this, in the statement all that has been deposed is, that the field is of his share of Bhai Bhant, at the time of settlement it was in his cultivation, and Padamiya was his servant, and that he remained his Hali for 2-3 years, and after settlement he discontinued, and went to his village. In other words, according to this statement Padamiya was discontinued after settlement, while settlement admittedly relates to somewhere in 2008-2009, corresponding to calendar year 1951-52, which is dead against the averment of the plaint itself, according to which he left somewhere in 1960's. Then, it is not deposed that in July, 1968 he obstructed the plaintiff from cultivating, which gave rise to the cause of action. With this, it is not shown, that the plaintiff has produced any record, including at least receipt of payment of land revenue, which he has deposed to be paying. In this background, the case of the L.Rs. of Padamiya, in the application for reference is, that they are continuing in peaceful cultivatory possession of the land, and it is only now, that the non-petitioners No. 7, 8 and 9 i.e. the transferees from Guman Singh, who have started illegally harassing them, and raising demand for money, under the pretext of their claiming to become Khatedar, and thereupon enquiries were made, and things were revealed, that a decree had been passed. If this stand is construed reasonably, it does show, that according to the applicants their possession had never been disturbed, so as to put them on their guards, about any decree having been passed, and immediately after they were threatened, they moved the application for making reference, after making necessary enquiries. It is again significant to note, that even before the learned Collector, though the applicants had produced the Parcha Lagan, showing their right, title and possession, nothing was produced on the side of the non-petitioners, or even before us to show, that the land was in actual physical possession of Guman Singh, as claimed in the suit, or even after the decree. It is significant to note, that non-petitioners, who are said to have threatened, had purchased the land only in the year 1988, i.e. 27.4.1988, and thereafter the land was mutated in their name. Significantly Guman Singh, or any of his legal representatives, or his purchasers, to whom the land was sold on 13.8.69, have not been produced, to even depose by word of mouth, that under the sale deed he has received the possession, and continued to be in possession, L.Rs. of Padamiya were not in possession, and that the seller had delivered possession to Aaskanwar, Allakanwar, Rustom Ali, and Mehrab Khan. All this does show, that apart from the fact that decree was fraudulently obtained by the plaintiff, it remained only a paper decree. The possession of Padamiya, or his legal representatives, was never disturbed, and it is not shown, that the mutation was effected even in favour of Mehrab Khan in 1969, after any notice to Padamiya, so as to make him aware of the decree, and give a starting point of time, for his getting activated. Thus, it cannot be said that the application for reference has been filed belatedly. In view of the various decisions referred by the learned Counsel for either side,

wherein it is laid down, what is to be the reasonable time depends upon facts and circumstances of each case, the facts and circumstances of the present case are also required to be considered, to find out, as to whether the application has been moved with unreasonable delay. And from the above we find, that the application cannot be said to be unreasonably delayed.

30. At this place we may observe, that of course the learned Collector has taken into consideration, one of the considerations, which could not be taken into account, viz. the decree having not been passed, or copy of the decree having not been issued, and the judgment only directing a decree to be issued. It would suffice to say, that this is a wholly misconceived assumption. The judgment is complete in itself, and preparation of decree was only ministerial act, but then nothing seriously turns on that aspect, therefore, this aspect is only noticed.

31. Thus, it cannot be said that the application for reference was unreasonably delayed.

32. Yet another aspect of the delay may be examined from the stand point of a recent judgment of Hon'ble the Supreme Court in Amrendra Pratap Singh's case. In Amrendra Pratap Singh's case, the property belonged to tribal, part of which was transferred. On 21.9.1956 regulations were promulgated prohibiting transfer of immovable property by Scheduled Tribe in scheduled area. The regulations prohibit the transfer of immovable property, by providing that transfer of immovable property situated within a Scheduled Area, by member of Scheduled Tribe, notwithstanding contained in any law for the time being in force, 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, and also provided, that where 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 etc., and certain other provisions in this line were made. It is in these facts, that question was raised, that the land belonged to aboriginal tribe and a Scheduled Tribe, and a person in possession claimed to be in adverse possession of more than 12 years, and the question posed was, can it be said that he has perfected the title by adverse possession, or that the suit has become barred by time, having been filed after 12 years since the date of possession, has become adverse, and it was held as under:

...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 imagination 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 prey 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 indefeatably 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 inroads 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 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 v. State of Maharashtra (1984) 2 SCR 224 , 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 (HL) 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.

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.

33. Inter alia with this finding, the judgment of the High Court was set aside.

34. In our view, these principles as propounded, are complete answers, to practically all the contentions raised on the side of the appellant. In the present case it is not shown, that Guman Singh was ever recorded as tenant, or the person in cultivatory possession, while admittedly Padamiya, member of Scheduled Caste was so recorded, and by resorting to legal technical contrivances, he is sought to be denuded of the property, which attempt has simply been foiled up by the impugned judgment.

35. The result of the aforesaid discussion is, that for a little bit different reasons, but then, in the ultimate conclusion, we do not find any ground to interfere with the impugned orders.

36. The appeal is, therefore, dismissed summarily.