
(1995) 09 SC CK 0079

In the Supreme Court Of India

Case No : Civil Appeal No. 2909 of 1977

Dy. Collector and Another

APPELLANT

Vs

S. Venkata Ramanaiah and Another

RESPONDENT

Date of Decision : 18-09-1995

Acts Referred:

Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 — Section 2(a), 3A, 3P, 3(1), 3(1)(a), 3(1)(b), 3(2)(a), 6A, 9, 10, 10(1)
Andhra Pradesh Ceiling On Agricultural Holdings Act, 1961 — Section 3(4), 10
Constitution Of India, 1950 — Article 20, 226, 244, 309

Citation : AIR 1996 SC 224 : (1995) 7 JT 1 : (1995) 5 SCALE 521 : (1995) 6 SCC 545 : (1995) 3 SCR 748 Supp

Hon'ble Judges : S. P. Bharucha, J; S. B. Majmudar, J; Faizan Uddin, J

Bench : Full Bench

Advocate : K. Amareshwari, G. Prabhakar and K. Ramkumar, A.D.N. Rao and A. Subba Rao, for the Appellant; V.A. Bobde, A.D.N. Rao and A. Subba Rao, for the Respondent

Final Decision : Allowed

Judgement

S.B. Majmudar, J.—Leave granted in S.L.P.(C) Nos. 10746 of 1981, 1041 of 1986 and 2407 of 1986.

2. In this group of matters a common question arises for our consideration. It is as under :

Whether the provisions of the Andhra Pradesh (Scheduled Areas) Land Transfer Regulation of 1959 (hereinafter referred to as 'Regulation') and the subsequent Regulation No. II of 1963 and Regulation No. 1 of 1970 have retrospective effect and can affect transfers made prior to the coming into force of the said Regulations.

3. We have learned Counsel appearing for the respective contesting parties in this group of matters. Accordingly all these appeals are being disposed of by this common judgment.

4. A few facts leading to these appeals may be noted at the outset.

Facts leading to Civil Appeal No. 2909 of 1977

5. The appellant authorities, namely, Deputy Collector (Tribunal Welfare) and the District Collector functioning in Srikakulam District in the State of Andhra Pradesh, have brought in challenge a decision of the Andhra Pradesh High Court allowing Writ Petition No. 4434 of 1975 moved by this respondents, praying for a writ of mandamus under Article 226 of the Constitution of India for quashing and setting aside the orders of the appellant authorities, passed under the provisions of the Regulation. The respondents, writ petitioners before the High Court had purchased the land in their occupation on 19th June 1919 from a non-tribal named Pappala Appanna. After the promulgation of the Regulation in 1959 as amended by Regulation I of 1970 the competent authority being agent of the Government initiated proceedings against the respondents on the ground that the said sale in their favour was hit by Section 3(1)(a) of the Regulation and, therefore, the respondents were liable to be evicted from the land in question which had to be restored to the original vendor or his successor in interest. After hearing the respondents the Deputy Collector (Tribunal Welfare) passed an order of eviction against the respondents. The respondents' appeal before the District Collector failed. And that is how the respondents filed writ petition before the High Court. A Division Bench of the Andhra Pradesh High Court by the judgment under appeal allowed the writ petition by taking the view that the provisions of the Regulation were not retrospective in nature and could not affect past transactions like the transaction in question which was reflected by Registered Sale Deed dated 19th June 1919 even though the land was situated in Srikakulam District which fell within the definition of 'Agency Tracts' as laid down by Section 2(a) of 1959 Regulation. It was, therefore, held that the said transaction could not be processed or scrutinised by the authorities functioning under the Regulation and they had no jurisdiction to treat the said transaction to be null and void under the Regulation. Writ Petition was accordingly allowed. The authorities as appellants before this Court have filed this appeal having obtained special leave to appeal from this Court against the impugned judgment of the Division Bench of the High Court.

Facts leading to Civil Appeal No. 6 1991

6. In this appeal the authorities functioning under the very same Regulation have brought in challenge the order passed by the Division Bench of the Andhra Pradesh High Court in Writ Appeal No. 121 of 1985 which came to be dismissed by the Appellate Court and whereby the order of the learned Single Judge in Writ Petition No. 1982 of 1978 came to be confirmed. The first respondent herein was a protected tenant of Survey No. 97 admeasuring 9 acres and 4 guntas and Survey No. 98 admeasuring 8 acres and 8 guntas situated at Chirrankunta Village of Asifabad Taluk of Adilabad District of Andhra Pradesh. One Siddamshetti Narayana was the Pattedar of the said land. Respondent No. 1 was cultivating the said land as his tenant. The Pattedar of this land was a tribal. He

had transferred this land for cultivation as a tenant to respondent No. 1 and it was noted in Khasra Pahani of year 1954-55 through mutation. Respondent No. 1 is a non-tribal. On the basis of the said protected tenancy created in favour of respondent No. 1 by the tribal, respondent No. 1 was declared owner of the said land on 1.1.1975 u/s 38(E) of the Andhra Pradesh (Telengana Area) Tenancy & Agricultural Act, 1950 and a certificate was issued u/s 38(E) in his favour.

7. The Special Deputy Collector (Tribal Welfare), Adilabad, issued a notice to the first respondent stating that the first respondent was in possession of the said land. The transfer of the said land in his favour contravened the provisions of Section 3(1) of the Regulation. He was, therefore, asked to show cause as to why he should not be ejected from the said land. Ultimately order of ejectment was passed against him by the Special Deputy Collector and the lands were ordered to be restored to respondent Nos. 2 to 4. Respondent No. 1 unsuccessfully went in appeal where stay was refused. He thereafter filed a writ petition in the Andhra Pradesh High Court. A learned Single Judge of the High Court allowed the writ petition on 8.2.1984 holding that the provisions of the Regulation as extended to Adilabad District in ex-Telengana region by Regulation II of 1963 could not affect the transfer in favour of respondent No. 1 which was made years back and when that transfer was valid and was supported by certificate of ownership granted to respondent No. 1 u/s 38(E) of the Andhra Pradesh (Telengana Area) Tenancy and Agricultural Lands Act, 1950. The present appellant authority carried the matter in appeal before the Division Bench of the High Court as noted earlier. That Writ Appeal came to be dismissed by the Division Bench by its order dated 11th February 1985. It is this order of the Division Bench which is brought in challenge in the present appeal after obtaining special leave to appeal from this Court.

Facts leading to Civil Appeal No. 8422/95 arising out of S.L.P(C) No. 10746 of 1981

8. This appeal is taken but by the Collector and Special Deputy Collector of Adilabad District in Andhra Pradesh. They have brought in challenge by special leave the judgment of the Full Bench of the Andhra Pradesh High Court rendered in Writ Petition No. 4204 of 1977 and group decided on 21st August 1981. Respondent No. 3 herein had purchased the disputed lands being Survey No. 33 measuring 0 acres and 17 cents and Survey No. 34 measuring 13 acres and 02 cents situated at Nandagaon Village in Adilabad Taluk of Adilabad District of Andhra Pradesh. Said area was declared to be a scheduled area as per the provisions of Regulation I of 1959 as amended by Regulation II of 1963, being the ex-Telengana area. These lands were purchased by respondent No. 3 under an Agreement to Sell dated 10th May 1955 from one Jaithu, a member of the scheduled tribe. Respondent Nos. 1 and 2 herein are said to be cultivating the said land as tenants of the third respondent. The land, Survey No. 8 was purchased under an Agreement of Sale dated 8th March 1963 by the brother of the first respondent from the 4th respondent, who is a daughter of the tribal

Jaithu. Respondent Nos. 3 and 4 are sons and daughters of Jaithu. They filed a petition u/s 3(2) of the Regulation I of 1959 before the Special Deputy Collector alleging that the transfer of the lands under the Agreements of Sale contravened the provisions of Section 3(1) of the Regulation and that they were entitled to be put back in the possession of the said lands. Special Deputy Collector accepted their request and held that respondent Nos. 1 to 3 were in illegal possession of the lands and they were liable to restore the possession to the heirs of the original tribal, that is, respondent Nos. 4 and 5. This order was confirmed in appeal preferred by respondent Nos. 1 to 3 to the District Collector, an agent to the State Government. It was thereafter that respondent Nos. 1 to 3 filed writ petition No. 4204 of 1977 seeking a writ of mandamus for quashing the orders of the Special Deputy Collector (Tribal Welfare) and the Appellate Collector. This writ petition and other companion matters were ultimately placed for disposal on reference by a Division Bench of the High Court before a Full Bench. The Full Bench of the High Court speaking through Ramachandra Rao, J., took the view that the provisions of the Regulation were not retrospective in nature and could not invalidate completed past transactions entered into in the scheduled area prior to the coming into force of Regulation I of 1959 as amended by Regulation II of 1963 which applied to Adilabad area from 1.12.1963. Writ Petition was accordingly allowed and the impugned orders were quashed. As noted earlier the said decision of the Full Bench is brought on the anvil of scrutiny by the appellant authorities in this appeal.

Facts leading to Civil Appeal No. 8423/95 arising out of S.LP(C) No. 1041 of 1986

9. This appeal is moved by Special Deputy Collector Tribal Welfare, and the District Collector, Adilabad, being aggrieved by the judgment and order of the Andhra Pradesh High Court. In Writ Appeal No. 52 of 1980 decided on 14th October 1985 by the impugned judgment the Division Bench of the High Court confirmed the order passed by learned Single Judge of the High Court in Writ Petition No. 4882 of 1977 decided on 13th June 1979. The learned Single Judge allowed the writ petition moved by respondent herein and set aside the orders passed by the authorities below under the Regulation. Respondent had purchased in 1942 10 acres and 34 guntas of Survey No. 92 of Sungapur Village in Asifabad Taluk of Adilabad District from the father of one Madavi Nanu who was original respondent No. 1 in the writ petition but who was not subsequently joined in the further proceedings in writ appeal as respondent. Madavi's father was a tribal. Pursuant to the said sale in favour of respondent his name was recorded as occupant in the land records and in the Khasra Pahani of the year 1954-55 and in the subsequent Pahani Partraks. The Special Deputy Collector (Tribal Welfare) Adilabad issued a notice to respondent No. 3 u/s 3(1) of the Regulation which came into force in the Telengana area on 1.12.1963. Respondent was called upon to show cause why he should not be evicted from the said land on the ground that possession of the respondent was in contravention of provisions of Section 3(1) of the Regulation. Ultimately the said proceedings terminated against the respondent. He was ordered to be evicted

from the land in question and the land was ordered to be restored to aforesaid Madavi. He unsuccessfully carried the matter in appeal and thereafter filed Writ Petition No. 4882 of 1977 in Andhra Pradesh High Court. Said writ petition was allowed by the learned Single Judge on 13th June 1979. The learned Judge took the view that the provisions of the Regulation did not affect the past transaction of 1942 in favour of respondent. Appellants carried the matter in Writ Appeal which came to be dismissed on 14th October 1985. As stated above the said decision of the Division Bench in Writ Appeal No. 52 of 1980 is the subject matter of the present appeal.

Facts leading to Civil Appeal No. 8424/95 arising from S.L.P.(C) No. 2407 of 1986

10. In this appeal appellant is one T. Rajaiah who has brought in challenge the order passed by the Division Bench of the Andhra Pradesh High Court dismissing appellant's Writ Appeal No. 406 of 1977 on 16.11.1985 and confirming the order of the learned Single Judge in Writ Petition No. 2449 of 1977 dated 14th July 1977. The appellant purchased 17 acres of Survey No. 28 situated at Dhanora Village in Asifabad Taluk of Adilabad District of Telengana area of Andhra Pradesh. He had purchased said land on 3.6.1951 from one Mesram Gangu who was a tribal. The third respondent herein being daughter of said Mesram Gangu filed an application u/s 3(1) of the Regulation for restoration of possession of the land on the ground that the appellant had purchased the land from to tribal and, therefore, transaction in his favour was null and void under the said provision. The Special Deputy Collector, Adilabad, after hearing the parties, by his order dated 4th December 1975 directed ejectment of appellant and restoration of land in favour of respondent No. 3 herein and one Naithan Bai another daughter of Mesram Gangu. The appellant unsuccessfully carried the matter in appeal and then filed Writ Petition No. 2449 of 1977 in the High Court against respondent Nos. 1 and 2 being the authorities whose orders were challenged and respondent No. 3, the original applicant before the respondent No. 2. The said writ petition was dismissed by the learned Single Judge on the ground that the appellant had an alternative remedy by way of revision before State authorities under the Regulation. It is this decision of the learned Single Judge which came to be confirmed by the Division Bench which dismissed the appellant's writ appeal as aforesaid. That is how after obtaining special leave to appeal from this Court the appellant has filed the present appeal.

Rival Contentions

11, Mrs. Amareshwari, learned senior counsel appearing for the appellants - Deputy Collector and Collector in C.A. No. 2909/77, C.A. No. 6/91, Civil Appeal arising from S.L.P.(C) No. 10746/81 and Civil Appeal arising from S.L.P.(C) No. 1041/86, contended that the provisions of the Regulation I of 1959 as well as the amending Regulation II of 1963 and Regulation I of 1970 had retrospective effect and consequently whether the transactions pertaining to the lands in question situated within the scheduled tracts covered by the Regulation were entered into between tribal transferors and non-tribal transferees or even for that matter

between non-tribal transferors and non-tribal transferees at any time in past got covered by the prohibitory and invalidating sweep of Section 3(1) of the Regulation, that the Full Bench had committed a patent error of law in treating these provisions as purely prospective. She alternatively contended that even assuming that the provisions of these Regulations were prospective in nature the concerned transferees after the coming into force of these Regulations in the scheduled areas were not entitled to continue in possession as their possession became invalid at least from the dates on which these Regulations applied to the areas where these lands were situated. Hence on that ground also the transactions were liable to be hit by Section 3(1) of the Regulation. Consequently the orders of eviction as passed by the authorities below were rightly passed and could not have been interfered with by the High Court.

12. Learned advocates for the concerned contesting respondents on the other hand submitted that the provisions of the Regulations in question are purely prospective in nature as there is no express provision made in these Regulations to make them retrospective from any pack date, nor do the wording of these Regulations exhibit any necessary intendment about retrospectivity. Consequently the High Court was right in holding these Regulations purely prospective in nature and therefore concluding that they could not affect the vested and accrued rights in favour of the transferees pursuant to old transactions in their favour which had taken effect years prior to the coming into operation of these Regulations.

13. Learned advocate appearing for the appellant in Civil Appeal arising out of S.L.P.(C) No. 2407 of 1986 submitted that the High Court had patently erred in dismissing his writ petition only on the ground of alternative remedy and when the Regulation itself was not retrospective in character it could not affect the transaction in his favour entered into years back on 3.6.1951 even though the land was situated in Adilabad District which ultimately got covered by the Regulation. And that if this Court takes the view that the Regulation was prospective in nature and did not affect past transactions then instead of relegating the appellant to the remedy of revision before the State, his writ petition which was dismissed by the High Court may be allowed on merits. Mrs. Amareshwari, learned senior counsel for the respondent-authorities reiterated her contentions in the other appeals that the transaction was hit by the Regulation which was retrospective in effect and, therefore, appellant's writ petition be created as dismissed also on merits and accordingly his appeal may be dismissed.

14. Before we deal with the question about the retrospectivity of the Regulation ill question it is necessary to note a few background facts leading to the enactment of the Regulation.

Background facts leading to enactment of the Regulation

15. In the Andhra area, prior to the formation of the State of Andhra Pradesh

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

16. Under the 1959 Regulation, any transfer of immovable property situated in the Agency Tracts, by a member of a Scheduled Tribe was declared null and void unless, made in favour of any other member of a Scheduled Tribe or a registered cooperative society composed solely of members of the Scheduled Tribes or with the previous consent in writing of the Agent. The said Regulation further empowered the Agent to decree ejectment against any person in possession of any immovable property, the transfer of which was made in contravention of its provisions and to restore it back to the transferor or his heirs. If the transferor or his heirs were not willing to take the property or where their whereabouts were not known, the Agent was further empowered to order assignment or sale of the property to any other member of a Scheduled Tribe or a registered cooperative society composed solely of members of the Scheduled Tribes or otherwise dispose of it, as if it was a property at the disposal of the State Government.

17. However, as difficulties were experienced by the Government in implementing the ejectment procedures under the said Regulation, inasmuch as it was not always easy for the concerned authority to ascertain the origin of the right under which the non-tribal was claiming possession and whether the land

now under the possession of a non-tribal was previously acquired from a tribal or not, the said 1959 Regulation was amended by the Andhra Pradesh Scheduled Areas Land Transfer (Amendment) Regulation, 1970 with a view to remedy the said mischief. The amending Regulation of 1970 in order to facilitate effective enforcement of the said 1959 Regulations introduced inter-alia, the following changes, namely :

(i) A rule of presumption was introduced to the effect that unless the contrary is proved, where a non-tribal is in possession of land in the Scheduled areas, he or his predecessors-in-interest, shall be deemed to have acquired it through transfer from a tribal;

(ii) Transfers of land in Scheduled Areas in favour of non-tribals shall be wholly prohibited in future;

(iii) Non-tribal holding lands in the Scheduled Areas shall be prohibited from transferring their lands in favour of persons other than tribals. Only partitions and devolution by succession of lands held by them shall be permitted; and

(iv) Where a tribal or non-tribal is unable to sell his land to a tribal on reasonable terms, it shall be open to him to surrender the land to Government who shall thereupon be obliged to acquire it on payment of appropriate compensation.

18. Clause (a) of substituted Section 3(1) rendered all the transfers made except those in favour of a tribal, to be null and void. Clause (b) of Sub-section (1) of Section 3 raises a presumption that any immovable property in possession of a non-tribal would be presumed to have been acquired by such person through a tribal. Clause (c) of Sub-section (1) of Section 3 provides for payment of compensation to the non-tribal at the rate specified in Section 10 of Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961. The Andhra Pradesh Regulation No. 1 of 1970 inserts Sub-section (4) in Section 3 whereby 'transfer' has been defined to include a sale in execution of a decree including a benami transaction. The only species of transfer which has been excluded from the operation of the regulation is petition or devolution by succession. Provision has been made for the ejectment of persons who came into possession of such lands as a result of such transfers and for the restoration of land to the original transferor or his heirs. By Regulation 1 of 1971 Section 3-A was introduced whereby a mortgage without possession in favour of a Bank or institution approved by the Government was permitted subject to certain conditions. The Governor further framed a regulation to amend the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959, being A.P. Regulation No. 1 of 1978 which came into force with effect from October 24, 1978. Regulation No. 1 of 1978 inserted Section 3-P and 6-A. Section 3-B prohibited registration of documents of transfer while Sections 6-A and 6-B respectively provided for punishment for acquiring any immovable property after a decree for ejectment was passed. The punishment is to the extent of rigorous imprisonment of one year or fine of Rs. 2000/- or both. Section 6-B makes such an offence cognizable.

19. It may be stated that a Division Bench of this Court consisting of M.P. Thakkar and B.C. Ray, JJ., by their decision dated 14th July 1988 in Civil Appeal No. 2299-2300 of 1972 upheld the validity of the provisions of the Regulation in so far as they sought to declare as void any transfer of immovable property in the agency tracts entered into even by a non-tribal in favour of another non-tribal.

20. Even though the aforesaid provisions of the Regulations represent a species of welfare legislation for protecting the illiterate tribals from exploitation at the hands of non-tribals the short question which arises for our consideration is as to whether these beneficial provisions have any retrospective effect.

Our conclusion and the reasons for the same

21. Having given our anxious consideration to the rival contentions canvassed for our consideration by the learned Counsel appearing for the respective parties we have reached the conclusion that the Full Bench of the High Court was perfectly justified in taking the view that on the express language of the Regulation, it was prospective in nature and even by necessary intendment it could not be posited that the framer of the Regulation wanted to give it any retrospective effect. Reasons for our aforesaid conclusion are obvious. The Regulation I for 1959 originally applied only to scheduled areas of East Godavari, West Godavari, Visakhapatnam and Srikakulam districts. By amending Regulation II of 1963, it was extended to Telengana region comprising of Adilabad, Warangal, Khammam and Mahbubnagar districts of Andhra Pradesh. That extension to districts in Telengana are became effective from 1.12.1963. Clause (2)(a) of the Regulation defines 'Agency tracts' to mean, 'the areas in the districts of East Godavari, West Godavari, Visakhapatnam, Srikakulam, (I) Adilabad, Warangal, Khammam and Mahbubnagar declared, from time to time, as Scheduled Areas by the President under Sub-paragraphs (I) of paragraph 6 of the Fifth Schedule to the constitution'. The term 'transfer' is defined by Clause (2)(g) of the Regulation to mean, 'mortgage with or without possession, lease, sale, gift, exchange or. any other dealing with immovable property, not being a testamentary disposition and includes a charge on such property or a contract relating to such property in respect of such mortgage, lease sale, gift, exchange or other dealing'. Then follows Section 3(1)(a) which is material for our present purpose. It is as under:

3.(1)(a) - Notwithstanding any thing contained in any enactment, rule or law in force in the Agency tracts, any transfer of immovable property situated in the Agency tracts by a person, whether or not such person is a member of a Schedule Tribe, shall be absolutely null and void, unless such transfer is made in favour of a person, who is a member of a Scheduled Tribe or a society registered or deemed to be registered under the A.P. Cooperative Societies Act, 1964, which is composed solely of members of the Scheduled Tribes.

It may be noted that the words 'whether or not such person is a member of a Scheduled Tribe' as found in Section 3(1)(a) were inserted by Regulation I of

1970 meaning thereby prior to the amending Regulation coming into force Section 3(1)(a) hit transfers of immovable property situated in agency tracts by only a member of a scheduled tribe and if such transfer was made by a non-tribal such transaction was outside the sweep of Section 3(1)(a). A close reading of Section 3(1)(a) indicates that after coming into force of the said provision any transfer of immovable property which is in the sweep of Section 3(1)(a) would be absolutely null and void unless the transfer falls within the excluded category as mentioned in the said provision. This Section nowhere indicates either expressly or even impliedly that it is meant to adversely affect completed transactions of transfer which might have taken place prior to the coming into force of Section 3(1)(a) of the Regulation. Mrs. Amareshwari, learned senior counsel could not effectively urge that there was any such express indication of retrospectivity in the said provision or any other part of the Regulation. It is obvious that if Section 3(1)(a) was to apply retrospectively to hit even past transfers it would have mentioned with reference to transfer of immovable property as under :

whether effected before or after coming into operation of this Regulation.

Such or similar words are conspicuously absent. Therefore, Section 3(1)(a) as it stands cannot be said to have any express retrospective effect. In this connection we may also mention one submission canvassed by learned senior counsel for the authorities. She contended that Section 3 Sub-section (1)(b) indicates such a retrospective effect, The said provision which is noted earlier reads as under :

3(1)(b). Until the contrary is proved, any immovable property situated in the Agency tracts and in the possession of a person who is not a member of a Scheduled Tribe, shall be presumed to have been acquired by such person or his predecessor in possession through a transfer made to him by a member of a Scheduled Tribe.

It is difficult to appreciate how this provision can be of any assistance to the learned senior counsel, for urging any retrospective operation of Section 3. Section 3(1)(b) enacts a rule of evidence which may be pressed in service in a properly constituted enquiry in cases where the main provision of Section 3(1)(a) gets attracted meaning thereby if in connection with any transfers of immovable property situated in Agency tracts effected after the coming into operation of Section 3(1)(a), a question arises whether the transfer was made by a transferor who was a member of a Scheduled Tribe and if it is shown that such transferred land was in possession of a non-tribal, a rebuttable presumption would arise u/s 3(1)(b) that such transferor was a member of Scheduled Tribe. This provision has nothing to do with any retrospective effect of Section 3(1)(a) itself not does it even remotely indicate that because of the rule of evidence enacted in Section 3(1)(b), even prior completed transfers would also be covered by the sweep of Section 3(1)(a)_.

22. Next Mrs. Amareshwari submitted that at least by necessary implication such

retrospectivity can be culled out and for that purpose she invited our attention to Sections 9 and 10(1) of the Regulation. The said provisions read as under :

9. The Agency Tracts Interest and Land Transfer Act, 1917 (Madras Act I of 1917) is hereby repealed to the extent to which any of the provisions contained therein correspond, or are repugnant, to any of the provisions contained in this Regulation.

10. (1) The provisions contained in this Regulation shall not affect-

(a) Any transfer made or sale effected in execution of a decree before the commencement of the Agency Tracts Interest and Land Transfer Act, 1917 (Madras Act I of 1917), or

(b) Any transfer made or sale effected in execution of a decree after the commencement of the said Act and before the commencement of this Regulation, if such transfer or sale was valid under the provisions of the said Act.

We fail to appreciate how the said Sections can be of any avail to the learned senior counsel for establishing the case of implied retrospective effect of the Regulation. Section 9 deals with the repeal of the erstwhile Agency Tracts Interest and Land Transfer Act, 1917. It is not in dispute between the parties that the said Act of 1917 did not apply to Telengana area. Consequently reference to Section 9 in connection with lands situated in Telengana area becomes irrelevant. Similarly Section 10 which affects savings in cases where the earlier Act of 1917 which had applied stood repealed by Section 9, also becomes irrelevant. However, so far as areas which were earlier governed by the Act of 1917 are concerned, even for them, we fail to appreciate, how Section 9 can be pressed in service by learned senior counsel for the appellant authorities to cull out an implied retrospective effect of the Regulation. In order to show that Section 3 of the Regulation had any implied retrospective effect provisions pertaining to repeal and savings contained in Sections 9 and 10 would be of no assistance. No other provisions of the Regulation could be pressed in service by learned senior counsel for supporting her contention that Section 3(1)(a) was retrospective by any necessary implication. It is obvious that transactions which have taken place years back prior to the very parent Regulation No. I of 1959 seeing the light of the day, and which had created vested rights in favour of the transferees could not be adversely affected by the sweep of Section 3(1). It cannot be said to have any implied retrospective effect which would nullify and confiscate pre-existing vested rights in favour of the concerned transferees, transfers in whose favour had become final and binding and were not hit by the then existing provisions of any nullifying statutes. In this connection we may usefully refer to Francis Bennion's Statutory Interpretation, Second Edition at page 214 wherein the learned author, in Section 97, deals with retrospective operation of Acts. The learned author has commented on this aspect as under :

The essential idea of a legal system is that current law should govern current activities. Elsewhere in this work a particular Act is likened to a floodlight

switched on or off, and the general body of law to the circumambient air. Clumsy though these images are, they show the inappropriateness of retrospective laws. If we do something today, we feel that the law applying to it should be the law in force today, not tomorrow's backward adjustment of it. Such, we believe, is the nature of law. Dislike of *ex post facto* law is enshrined in the United State Constitution and in the constitutions of many American states, which forbid it. The true principle is that *lex prospicit non respicit* (law looks forward not back). As Willes J. said, retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law.

Retrospectivity is artificial, deeming a thing to be what it was not. Artificiality and make-believe are generally repugnant to law as the servant of human welfare. So it follows that the courts apply the general presumption that an enactment is not intended to have retrospective effect. As always, the power of Parliament to produce such an effect where it wishes to do so is nevertheless undoubted. The general presumption, which therefore applies only unless the contrary intention appears, is stated in Maxwell on the Interpretation of Statutes in the following emphatic terms. 'It is a fundamental rule of English law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication.'

Maxwell's statement has received frequent judicial approval. It is however too dogmatically framed, and describes as a rule what (for reasons stated in Codes 180) is really no more than a presumption which, in the instant case, may be outweighed by other factors. Where, on a weighing of the factors, it seems that some retrospective effect was intended, the general presumption against retrospectivity indicates that this should be kept to as narrow a compass as will accord with the legislative intention.

23. Mr. Bobde, learned Counsel appearing for the respondents as *amicus curiae* at our request, invited our attention to a decision of this Court in the case of R. Rajagopal Reddy and Others (deceased by legal representatives) Vs. Padmini Chandrasekharan (deceased by legal representatives), wherein one of us (Majmudar, J.) speaking for a Three Judge Bench on the question of retrospective effect of a statutory provision observed as under :

....Even otherwise, it is now well settled that where a statutory provision which is not expressly made retrospective by the legislature seeks to affect vested rights and corresponding obligations of parties, such provision cannot be said to have any retrospective effect by necessary implication. In Maxwell on the Interpretation of Statutes, 12th Edn. (1969), the learned author has made the following observations based on various decisions of different courts, specially in *Re: Athlumney*, (1898) 2 Q.B. . 551 :

'Perhaps no rule of construction is more firmly established than this - that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matters of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only.' The rule has, in fact, two aspects, for it, involves another and subordinate rule, to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary.'

In the case of *Garikapati Veeraya v. N. Subbiah Choudhary* AIR 1937 SC 540, para 25 Chief Justice S.R. Das speaking for this Court has made the following pertinent observations in this connection :

'The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed.'

Therefore, we agree with the submission of Mr. Bobde, learned Counsel for respondents, that the provisions of Section 3(1) of the Regulation are purely prospective in nature and do not affect past transactions of transfers effected between tribals and non-tribals or between non-tribals and non-tribals themselves in the Agency Tracts at a time when neither Regulation I of 1959 nor Regulation II of 1963 or Regulation I of 1970 was in force. Such past transactions remained untouched by the sweep of the aforesaid subsequently enacted Regulations.

23A. Mrs. Amareshwari, learned senior counsel in the alternative contended that even assuming that all these Regulations do not adversely affect past transactions even, then, after the coming into force of these Regulations in the concerned Agency Tracts, the possession of erstwhile transferees would become illegal and get hit by Section 3(1) of the Regulation. It is not possible to agree with this contention for the simple reason that before the continued possession is found fault with, it must be shown that the initial entry of the transferee was violative of any provision of law or that by any subsequent statute such continuance of possession under an originally valid transaction, would get adversely affected. Section 3(1) nowhere whispers about such an eventuality. On the contrary, employment of terminology to the effect, "transfer of immovable property situated in the Agency tracts by a person, whether or not such person is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of a person who is a member of a Scheduled tribe" clearly indicates that Section 3(1)(a) seeks to hit only those transfers which take place after the coming into force of that provision and when such transfers are found to be absolutely null and void then only the question of continued illegal possession of such transferee and of evicting such transferee from the land and restoration of such land to the transferor would arise u/s 3(2)(a). The said

provision reads as under :

3.(2)(a). Where a transfer of immovable property is made in contravention of Sub-section (I), the Agent, the Agency Divisional Officer or any other prescribed officer may, on application by any one interested, or on information given in writing by a public servant, or suo-motu decree ejectment against any person in possession of the property claiming under the transfer after due notice to him in the manner prescribed and may restore it to the transferor or his heirs.

On a conjoint reading of Section 3(1)(a) and Section 3(2)(a), it becomes clear that the Section seeks to hit the transfers effected after the Section came into force and possession only under such invalid transfers is sought to be dealt with for the purpose of eviction of transferees and restoration of possession to transferors, as the case may be, u/s 3(2)(a) of the Regulation. Consequently, the alternative submission of learned senior counsel for the authorities that even though transfer of immovable property in the Agency tracts may not be hit by Section 3(1)(a) still possession under such transfers could be restored to the original transferor u/s 3(2)(a), cannot be countenanced. Section 3(2)(a) is a corollary to Section 3(1)(a) and cannot have any independent role to play. Nor can it cover any area which is not encompassed by the sweep of Section 3(1)(a). In this connection Mrs. Amareshwari, learned senior counsel also invited our attention to two decisions of this Court. Mrs. Amareshwari, learned senior counsel for the appellant authorities invited our attention to a Constitution Bench judgment of this Court in *Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh*, . In that case the Constitution Bench of this Court speaking through Jagannadhadas J., had to consider whether prohibition of Article 20 of the Constitution against convictions and subjections to penalty would cover ex post laws passed before the Constitution was promulgated. Answering the question in the affirmative it was observed the prohibition contained in Article 20 of the Constitution against convictions and subjections to penalty under ex post facto laws is not confined in its operation to post Constitution laws but applies also to ex post facto laws passed before the Constitution in their application to pending proceedings. We fail to appreciate how this decision can be of any avail to the learned senior counsel for the appellant authorities. On the wording of Article 20 the aforesaid view was taken by the Constitution Bench. The wordings of Section 3(1)(a) read with Section 3(2)(a) of the Regulation are entirely different and they have to be construed in their own light. The learned senior counsel Mrs. Amareshwari then invited our attention to another decision of the Constitution Bench of this Court in *Bishun Narain Mishra Vs. State of Uttar Pradesh and Others*, . In that case Wanchoo J., speaking for the Constitution Bench had to examine the effect of a rule promulgated by Government of Uttar Pradesh under Article 309 of the Constitution reducing the age of superannuation of Government servants from 58 years to 55 years. The appellant before this Court who got hit by the said rule raised various contentions one of which was that the rule was retrospective in character and, therefore, bad as no notification promulgating the rule could be made with retrospective effect. Repelling this

contention it was held by the Constitution Bench that there was no retrospectivity in the rule. All that it provided was that from the date it came into force the age of retirement would be 55 years. The rule would operate only for the period after it came into force. Nor did the proviso make it retrospective. It only provided as to now the period of service beyond 55 years should be treated in view of the earlier rule of 1957 which was being changed by the rule of 1961. The second order issued on the same day clearly showed that there was no retrospective operation of the rule for in actual fact no Government servant below 58 years was retired before the date of the new rule i.e. May 25, 1961. Thus the new rule reducing the age of retirement from 58 years to 55 years could not be held to be retrospective. It is difficult to appreciate how those judgment can be of any avail to learned senior counsel for the appellant authorities, because the appellant in that case continued in Government service and at that time the new rule reducing the age of superannuation came into force his superannuation was governed by the new rule reducing the age of superannuation from 58 to 55 years. There was no question of any retrospective effect of the said rule. But the new rule clearly covered the then existing service conditions of Government servants who were still in service. Section 3(1) of the Regulation cannot be supported on the ratio of that judgment to nullify vested rights under past completed transactions. As we have already discussed earlier, Section 3(1)(a) read with Section 3(2)(a) of the Regulation seeks to hit only those transfers of lands in Agency tracts which take place after the advent of Section 3(1)(a) of the Regulation. Possessions under transfers which are beyond the sweep of Section 3(1)(a) cannot be said to have continued under any invalid transfers as envisaged by Section 3(1)(a). Such possessions obtained under the then existing old and valid transfers would be outside the ken of the Regulation itself. The alternative submission canvassed by learned senior counsel for the authorities, therefore, also has no substance and has got to be rejected.

24. These were the only contentions canvassed in support of the appeals preferred by the authorities under the Regulation. There is no substance in these contentions. It must be held that as the transfer in these cases were effected years back, prior to the coming into force of the Regulations in question, they could not be covered by these Regulations. The authorities acting under the Regulations had no jurisdiction to deal with them. In the result the Civil Appeal Nos. 2909 of 1977; 6 of 1991; Civil Appeal No. 8422/9 arising out of S.L.P.(C) No. 10746 of 1981 and Civil Appeal No. 8423/95 arising out of S.L.P.(C) No. 1041 of 1986 will have to be dismissed.

25. Before parting with these appeals we have to place on record our appreciation for the assistance rendered by Mr. Bobde, learned Counsel who on our request was good enough to appear *amicus curiae* for the respondents in these cases.

26. So far as Civil Appeal No. 8424/95 arising out of S.L.P.(C) No. 2407 of 1986 is concerned, though the High Court had dismissed the writ petition on the

ground of alternative remedy, in view of our decision on the main controversy and our finding that the provisions of the Regulation would not hit transaction of transfers entered into prior to coming into force of the Regulation this appeal is required to be allowed on merits. In the present case even though the sale was of the land situated in Adilabad District of Telengana region which was forming a part and parcel of the Agency tracts, as the transaction was of 3.6.1951, much prior to the coming into force of the Regulation I of 1959 as amended by Regulation II of 1963 which became effective in Adilabad from 3.12.1963, this transaction was outside the sweep of Section 3(1) of the Regulation. Consequently no useful purpose would be served by relegating the appellant to the remedy of revision before the State authorities when this question is concluded by our present judgment. The appeal is accordingly allowed. The judgments of the Division Bench of the High Court and that of learned Single Judge are set aside. Writ Petition filed by the appellant before the High Court is allowed. The orders of the authorities below against the appellant passed u/s 3(1) (a) read with Section 3(2)(a) of the Regulation will stand quashed and set aside. As these appeals are being disposed of on a question of law and keeping in view the facts and circumstances of the cases, even though the appeals by the authorities are dismissed and the last appeal moved by T. Rajaiah arising out of S.L.P(C) No. 2407 of 1986 is allowed, there will be no order as to costs in all these appeals.