

(2000) 06 AP CK 0035

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15103 of 1993 and Batch

Madakam Venkateswara Rao and others

APPELLANT

Vs

Subordinate Judge, Kothagudem, Khammam District and
another

RESPONDENT

Date of Decision : 27-06-2000

Acts Referred:

Andhra Pradesh Agency Rules, 1924 — Rule 35, 36, 57
Andhra Pradesh Civil Courts Act, 1972 — Section 1(3), 10, 11, 12(1), 13, 13
Andhra Pradesh Panchayat Samithis and Zilla Parishads Act, 1959 — Section 7(1)
Andhra Pradesh Scheduled Areas Land Transfer Regulations, 1959 — Rule 3, 4
Civil Procedure Code, 1908 (CPC) — Section 1(3), 16, 20, 9
Constitution of India, 1950 — Article 244, 395
Government of India Act, 1935 — Section 92
Land Acquisition Act, 1894 — Section 18, 3
Scheduled Districts Act, 1874 — Section 6

Citation : (2000) 5 ALD 32 : (2000) 4 ALT 163

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : M/s. Y. Rama Rao, Palivela Satyaraja Babu, A. Rajasekhara Reddy, Hari Sreedhar, Ch. B.R.P. Sekhar, M. Raja Malla Reddy, K. Vijaya Kumar, D.S.N.V. Prasad, P.V. Ramana, B.S. Prasad, G.V.R. Chowdary, D. Ramesh, K. Anji Reddy, Kuna Reddyanji Reddy, P. Kameswara Rao, Mr. C.V. Nagarjuna Reddy, SC for High Court and Mr. A. Rangachar Government Pleader acted as Amicus curiae for Home, for the Appellant;

Judgement

1. Heard the respective contentions submitted by the learned Counsel appearing for the petitioners, respondents and also the Standing Counsel for the High Court and Government Pleader for Home. Sri A. Rangacharyulu, learned Counsel also assisted the Court as Amicus Curiae.

In these two writ petitions and all the Civil Revision Petitions the only question that arises for consideration is whether the concerned civil Courts of the Junior Civil Judges and Senior Civil Judges of Kothagudem and Sattupalli have jurisdiction in the matters of which the cause of action wholly arose in the

scheduled areas.

2. The brief facts in these two writ petitions are that the petitioners are the owners of the small extents of agricultural lands in the scheduled area of Bhadrachalam division i.e., agency area and they are scheduled Tribes and their lands were acquired for the purpose of excavation of canal of "Taliperru Reservoir Project" and the Land Acquisition Officer-Special Deputy Collector (LA) ITP and Railways, Khammam, has conducted award proceedings and paid the compensation to the petitioners and all the petitioners having dissatisfied with the determination of the compensation made by the Land Acquisition Officer, filed applications u/s 18 of the Land Acquisition Act to refer the matter to the Subordinate Judge (Senior Civil Judge) Kothagudem, for adjudication and determination of the compensation and accordingly the matters are said to have been referred to the Subordinate Judge, Kothagudem, Khammam District in the year 1991 and OPs., were numbered but the Subordinate Judge, Kothagudem, declined to dispose of the said OPs., on the ground that the Subordinate Court has no jurisdiction over the matters in the scheduled areas and aggrieved by the action of the learned Subordinate Judge, Kothagudem, these two writ petitions have been filed stating that the Subordinate Judge, Kothagudem has the territorial jurisdiction over Bhadrachalam Scheduled Area, and therefore, they are entitled to seek a writ of mandamus to declare the action of the Subordinate Judge, Kothagudem in not adjudicating the OPs., as illegal and for a direction to dispose of the same.

3. The learned Subordinate Judge, Kothagudem, filed common counter in the two writ petitions stating that though the territorial jurisdiction over the Revenue Taluks of Bhadrachalam and Nuguru were conferred on the Subordinate Court, Kothagudem by virtue of G.O. Ms. No.571, Home (Courts-A) dated 18th September, 1981, but the Government issued another G.O. Ms. No. 198, Home (Courts-A), dated 20th April, 1989 and as per the said G.O., the Subordinate Judge, Kothagudem has no territorial jurisdiction over the area of Bhadrachalam and Nuguru Revenue Taluks, and therefore, the Subordinate Judge, Kothagudem, has no jurisdiction over the matter to entertain the OPs. Keeping in view of the deletion of the territorial jurisdiction over Bhadrachalam and Nuguru Taluks by the said notification dated 20-4-1989, the Court has no jurisdiction under the Civil Courts Act over the said scheduled areas and therefore, the Court expressed-its opinion that it had no jurisdiction to entertain the matters arising out of those Taluqs of Bhadrachalam and Nuguru. It is further stated that the District and Sessions Judge, Khammam, also addressed a letter dated 6-4-1993 to the High Court of Andhra Pradesh informing of the said fact and also informed the Subordinate Court that it has no territorial jurisdiction over the areas of Bhadrachalam and Nuguru Taluqs unless a fresh notification is issued by the Government. Thus, the Subordinate Judge, Kothagudem, justified his action in not entertaining the said OPs.

4. While admitting the said Writ Petitions, an interim direction was granted

stating that u/s 3(d) of the Land Acquisition Act, 1894, the "Court" means Principal Civil Court of original jurisdiction, unless the appropriate Government has appointed a Special Judicial Officer within any specified local limits to perform the functions of the Court under the Act and since the Sub-Court has no jurisdiction over the agency areas as per the notification under the Civil Courts Act, the learned Government Pleader for Home was directed to bring this fact to the notice of the Government and the Government was also directed to take appropriate action in this regard in consultation with the High Court otherwise the aggrieved citizens of Bhadrachalam and Nuguru Revenue Taluqs will be without any remedy to obtain enhanced compensation under the Land Acquisition Act. Neither the Government Pleader nor the standing Counsel for the High Court is able to furnish any information with regard to the action taken by the Government.

5. In all these Civil Revision Petitions, the cause of action wholly arose in the Scheduled Areas only. The suits were filed for recovery of certain amounts from the defendants. It is stated that the parties to the suits are non-tribal and though the cause of action wholly arose in agency areas and as the Courts have got territorial jurisdiction to entertain the suits, the suits have been filed and decrees have been obtained. At the time of the execution of the decrees, the petitioners herein have raised objections and filed these Civil Revision Petitions stating that the said civil Courts have no jurisdiction either to pass the decrees or to execute the same and the decrees passed by the Courts are nullity as the Andhra Pradesh Civil Courts Act, 1972 is not applicable to the scheduled areas. It is further submitted that even if the civil Courts have jurisdiction over the matters to pass decrees, the said civil Courts cannot execute the same in respect of the scheduled areas under Rule 35 of the A.P. Agency Rules, 1924 and the proper course of remedy for execution of decrees is only to forward the decree and copy of the judgment to the Agent to the Government, who shall cause the decree to be executed in the manner provided under the Rules for execution of the decrees passed by the Agency Courts.

It is also further submitted that as per Rule 36 of A.P. Agency Rules, where the decree passed by any Agency Court is to be executed outside the Agency Area, the Agency Court on application of the decree holder shall send to the concerned District Court for execution.

6. To resolve the question that arises for consideration in these cases, it is necessary to refer certain provisions of the Andhra Pradesh Civil Courts Act and the Agency Laws applicable in the scheduled areas etc.

Under Article 244 of the Constitution of India, the provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in the State. Fifth Schedule deals with the provisions as to the administration and control of Scheduled Areas and Scheduled Tribes. Paragraph 5 of the Fifth Schedule reads as follows :

"5. Law applicable to Scheduled Areas :--(1) Notwithstanding anything in this Constitution, the Governor may by public notification direct that any particular act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State subject or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given as to have retrospective effect.

(2) The Governor may make regulations for the peace and good Government of any area in a State which is for the time being a Scheduled Area.

In particular and without prejudice to the generality of the foregoing power, such regulations, may,--

(a) Prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;

(b) Regulate the allotment of land to members of the Scheduled Tribes in such area;

(c) Regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.

(3) In making any such regulation as is referred to in sub-paragraph (2) of this paragraph, the Governor may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.

(4) All regulations made under this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.

(5) No regulation shall be made under this paragraph unless the Governor making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council."

As seen from the paragraph 5 of the Fifth Schedule, the Governor may by public notification direct that particular act of the Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof.

The Tribal areas are mainly inhabited by tribes, who by fact of their being primitive and innocence, are extremely vulnerable to exploitation by plains people. The tribals, besides them, having been governed by tribal customs and laws, cannot be brought under the laws that govern the plains men. Those particularities of the tribal areas have been taken into consideration by the makers of the Indian Constitution and special provisions have been enacted for administration and control of the Scheduled Areas and Scheduled Tribes in the Fifth Schedule of the Constitution. Scheduled Areas are popularly known as Agency Areas. The Governor, who is responsible for the administration of the Scheduled Areas, functions through the District Collector, who acts as Agent of the Government, so far as the Scheduled Areas in the Districts are concerned.

Scheduled Areas are under immediate control of the Agent (District Collector). Several enactments have been made for the administration and control of the Scheduled Areas and Scheduled Tribes. These enactments only govern over the Scheduled Areas which are also known as Agency Areas. One of such enactments is the Scheduled District Act, 1874 (Act 14 of 1874). Section 6 of the Scheduled District Act reads as follows:

"6. Appointment of Officers and regulation of their procedure--The local Government may from time to time-

(a) appoint officers to administer Civil and Criminal justice and to superintend the settlement and collection of public revenue, and all matters relating to rent and otherwise to conduct the administration, within the Scheduled Districts.

(b) regulate the procedure of the officers so as to appoint: but not so as to restrict the operation of any enactment for the time being in force in any of the said districts.

(c) Direct by what authority any jurisdiction, powers or duties incident to the operation of any enactment for the time being in force in such district shall be exercised or performed."

Under Section 6 of the Scheduled District Act, 1874, the Governor is pleased to make the Andhra Pradesh Agency Rules, 1924 for administration of Agency Tracts and for regulation of the procedure of the officers appointed to administer them. Civil justice and jurisdiction of the Courts have been entrusted to the concerned Agency Courts and Agency Munsif, Agency Divisional Officer and Agent to the Government have been conferred the territorial and pecuniary jurisdiction under the Rules. The concerned Courts are empowered to try and adjudicate the suits and there is also provision for transfer of the suits to the concerned Agency Courts. Different rules have been framed relating to the institution, trial and determination of the suits, transfer of suits, engaging the pleaders in the agency Courts, service of process, appearance of parties and consequences of non-appearance, execution of decrees and orders, investigation of claims and objections to execution, interim protection of the property, appeals are also provided under the rules. The relevant Rule 35 reads as follows:

"35. Where it is sought to execute within the Agency tracts a decree passed by a Court in India situated outside the said tracts, the Court issuing the decree shall forward the decree and a copy of the judgment in the suit to the Agent to State Government who shall cause the decree to be executed in the manner provided by these rules for the execution of a decree passed by him :

Provided that for reasons to be recorded, the Agent to the State Government may refuse to cause any such decree to be executed, or may at any stage of the execution order the execution of any such decree to be stayed. Provided also that such refusal or order of the agent to the State Government shall be subject to revision by the State Government.

The agent to the State Government shall furnish to the Court issuing the decree a certificate of execution or a copy of his order refusing to execute or slaying the execution of the decree."

"Rule 36 :--Whenever it is sought to execute outside the Agency tracts a decree passed by an Agency Court, the Court passing the decree shall on the application of the decree-holder send it to the District Court of the district where the judgment-debtor actually and voluntarily resides or carries on business or personally works for gain."

Several enactments, regulations, rules and orders made for the administration and control of the Agency Areas are exhaustive in nature and covers all the issues relating to the Civil jurisdiction and one of the important regulations is the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959. As per Rule 3 of Regulation 1959 any transfer of immovable property situated in the Agency Tracts by any person whether Scheduled Tribe or not in favour of any person other than a member of the Scheduled Tribe is null and void. The Regulation does not restrict the transfer of immovable property by a non-tribal to a tribal. Any transfer in favour of non-tribal is null and void and not entitled to retain the property.

As per Rule 4 of the Regulation, 1959, every suit against the member of the Scheduled Tribe shall be instituted in the Agency Courts only having jurisdiction over the Agency tracts. As per the said Rule, even if any civil Court is conferred the territorial jurisdiction over the Scheduled tracts, the suit against the Scheduled Tribe cannot be filed in the civil Court but it shall be instituted in the Agency Courts alone.

7. The CPC is extended to the whole of India except the State of Jammu and Kashmir and the State of Nagaland and other tribal areas. The Tribal [Scheduled] Areas is defined in explanation to Section 1(3) of Code of Civil Procedure. Scheduled Area means territories which immediately before 21st day of January, 1972 were included in the tribal areas of Assam as referred in the paragraph 20 of the Sixth Schedule to the Constitution. As per Section 1(4) of the Civil Procedure Code, the Code is applicable to East Godavari, West Godavari and Visakhapatnam Agencies in the State of A.P. without prejudice to the application of any rule or regulation for the time being in force in such Agencies. Thus, the CPC is applicable without prejudice to the application of any Rule or Regulation is in force in the Scheduled Areas. As per Section 9 of the Code of Civil Procedure, all civil Courts shall have jurisdiction to try the stilt of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. As per Section 20 of the Code of Civil Procedure, a suit can be instituted where the defendant resides or cause of action arises wholly or in part. But as per Section 16 of CPC in respect of immovable property the suit shall be instituted within the local limits of whose jurisdiction the property is situate.

8. The Andhra Pradesh Civil Courts Act, 1972 (Act 19 of 1972) has been enacted

to consolidate and amend the law relating to the civil Courts subordinate to the High Court in the State of Andhra Pradesh. The A.P. Civil Courts Act, 1972 extends to the whole State of Andhra Pradesh but as per Section 1(3) it shall come into force in such area and on such date as the Government may, by notification, appoint, and they may appoint different dates for different areas and for different provisions of this Act. "Court" means a civil Court established or deemed to be established under this Act. u/s 1(3) of A.P. Civil Courts Act, a notification has been issued appointing 1-11-1972 as the date on which all the provisions of the said Act shall come into force in the whole of the State of Andhra Pradesh except in the Scheduled Areas of the State and the said notification reads as follows;

"The Andhra Pradesh Civil Courts Act, 1972

(Andhra Pradesh Act 19 of 1972)

Bringing the Act into force with effect from

1st November, 1972

Home (Courts-A) Department

G.O. Ms. No. 1573 Dated the 30th October, 1972

Read the following:

Read:--(1) G.O. Ms. No.65, Law, dated 13-10-1972 (2) The Andhra Pradesh Civil Courts Act, 1972 (Andhra Pradesh Act 19 of 1972) published in Part 1V-B, Extraordinary, of the Andhra Pradesh Gazette, dated 13-10-1972.

(3) From the High Court of Andhra Pradesh letter No.183 of 1969, B1,dated 13-10-1972.

ORDER

The following Notification will be published in the extra-ordinary issue of Andhra Pradesh Gazette, dated 31-10-1972.

2. This order issues, with the concurrence of the Industries and Commerce Department vide their U.O.4742./PTS/72-1, dated 31-10-1972.

NOTIFICATION

In exercise of the powers conferred by sub-section (3) of Section 1 of the Andhra Pradesh Civil Courts Act, 1972 (Andhra Pradesh Act 19 of 1972) the Governor of Andhra Pradesh hereby appoints the 1 st day of November, 1972 as the date on which all the provisions of the said Act shall come into force in the whole of the State of Andhra Pradesh except in the Scheduled Areas of the State."

It is clear from the aforesaid notification that all the provisions of the Civil Courts Act have no application in the Scheduled Areas of the State and all the provisions of the said Act are applicable in other than the Scheduled Areas. Sections 3, 10,

12, 14 and 18 of the A.P. Civil Courts Act deal with the establishment of the civil Courts. Sections 4, 11, 13 and 32 deal with the appointment of the Judges of the civil Courts. Sections 5, 15, and 16 deal with the power of the Government with the consultation of the High Court conferring or altering the territorial jurisdiction and also the pecuniary jurisdiction of the concerned civil Courts. Section 17(3), deals with the appellate powers of the concerned civil Courts.

It is, thus, contended by the teamed Counsel appearing for the petitioners in all these Civil Revision Petitions that in view of the aforesaid notification issued u/s 1(3) of the A.P. Civil Courts Act, all the provisions of the A.P. Civil Courts Act are not applicable in the Scheduled Areas of the State of Andhra Pradesh, and therefore, any Court established under the Civil Courts Act, cannot be conferred any territorial jurisdiction over the Scheduled Areas, and therefore, the decrees made by the civil Courts are in nullity and the said decrees cannot be executed insofar as the Scheduled Areas are concerned where the whole cause of action arose.

9. It is contended by the learned Counsel for the respondents that the Governor of Andhra Pradesh, after consultation with the High Court of Andhra Pradesh, issued a notification in G.O. Ms. No.571, Home, (Courts-A), dated 18th September, 1981 in exercise of the powers conferred under Sections 12(1) and 15(1) read with Section 21(1) of A.P. Civil Courts Act established a Court of Subordinate Judge at Kothagudem as sanctioned in G.O. Ms. No.502, Home (Courts-A) dated 12-8-1981 and in partial modification of the previous notifications on the subject conferred the territorial jurisdiction over the Revenue Taluqs of Burugampad, Ellandu, Bhadrachalam, Nuguru, Kothagudem, Sudimalla and Manguru on the Subordinate Judge's Court, Kothagudem, and therefore, the Subordinate Judge's Court, Kothagudem is having the territorial jurisdiction over the Revenue Taluqs of Bhadrachalam, Nuguru and other Scheduled Areas to entertain the suits. It is further submitted that though the Governor of Andhra Pradesh after consultation with the High Court of Andhra Pradesh issued notification in G.O. Ms. No. 198, Home (Courts-A), dated 20th April, 1989 in exercise of powers under Sections 12(1), 15(1) and 21(1) of the Andhra Pradesh Civil Courts Act conferring the limits of the territorial jurisdiction on the Subordinate Judge's Court, Kothagudem over the Revenue Mandals of Ellandu, Singareni, Kamepalli, Garla, Bayyaram, Gundala, Tekulpalli, Kothagudem, Paloncha, Mulkalpalli, Julurpadu, Enkur, Burgampad, Kuknur, Valarpadu, Manguru, Aswapuram and Pinapaka, the jurisdiction of the Revenue Taluqs of Bhadrachalam and Nuguru have not been specifically deleted, and therefore, the Subordinate Judge, Kothagudem, can exercise the powers not only over the aforesaid two Revenue Taluqs but also over other tribal areas over which the Revenue Mandals of the tribal areas have been brought under the jurisdiction of Kothagudem and Sattupalli civil Courts. It is further submitted that certain appellate powers have also been conferred u/s 17(3) of the A.P. Civil Courts Act on the Subordinate Judge's Court, Kothagudem in respect of the Revenue Mandals of Ellandu, Singareni, Kamepalli, Garla, Bayyaram, Gundala, Tekulpalli,

Kothagudem, Paloncha, Mulkalpalli, Julurpadu, Enkur, Burugampad, Kuknur, Valarpadu, Manguru, Aswapuram and Pinapaka and on the Subordinate Judge's Court, Sattupalli over the Revenue Mandals of Ellandu, Madira, Bonakal, Wyra, Tallada, Kallur, Penuballi, Aswaraopet and Chandrugonda, and therefore, the said civil Courts have power to entertain the civil suits and appeals in respect of the Scheduled Areas also under their jurisdiction.

Conferring the territorial Civil Original and Appellate jurisdiction on the Courts have been issued by the said notifications in exercise of the powers under Sections 12(1), 15(1), 17(3) and 21(1) of the A.P. Civil Courts Act, and therefore, any Court established under the said provisions and conferring the jurisdiction on the said civil Courts of Kothagudem and Sattupalli, is illegal, unconstitutional and without jurisdiction as all the provisions of the A.P. Civil Courts Act have no application to the Scheduled Areas of the State, and\ therefore, the said civil Courts cannot assume and presume any powers under the A.P. Civil Courts Act to entertain any civil suits in respect of the Scheduled Area where the whole of the cause of action arose. When the provisions of the Civil Courts Act are not applicable to the Scheduled Areas of the State, the Civil Courts established under the A.P. Civil Courts Act cannot be conferred any territorial jurisdiction either to entertain the original civil jurisdiction or appellate jurisdiction on the civil Courts over the Scheduled Areas, and therefore, there is no force in any of the contentions of the learned Counsel for the respondents.

10. As already stated, the whole of the cause of action arises in the Scheduled Areas only in respect of the suits filed in Junior and Senior Civil Judges' Courts at Kothagudem and Sattupalli. It is the contention of the learned Counsel for the petitioners that as the provisions of the civil Court are not applicable in the Scheduled areas and the Government have not issued any notification appointing any other different dates for different areas as contemplated u/s 1(3) of Andhra Pradesh Civil Courts Act, 1972, the judgments and decrees passed by the Junior Civil Judges and Senior Civil Judges of Kothagudem and Sattupalli are without jurisdiction and nullity, and therefore, the Execution Petitions cannot be executed. When the provisions of Civil Courts Act have no application in the Scheduled Areas, conferring jurisdiction over the Junior Civil Judges and Senior Civil Judges Courts established under the A.P. Civil Courts Act, 1972 to entertain the suits in the Scheduled Area does not arise.

11. Sri M. Rajamalla Reddy, learned Counsel for the respondents submitted that in respect of the Agency Areas of Khammam District the provisions of the CPC are applicable and as per Section 1(4) of the CPC and the application of the CPC is not prohibited and insofar as the East Godavari, West Godavari and Visakhapatnam Agencies in the State of Andhra Pradesh, the application of the CPC shall be without prejudice to the application of any rules and regulations for the time being in force in such agencies as the case may be. Even-though the provisions of the CPC are applicable in respect of the Agency Areas of Khammam District, as long as the provisions of the A.P. Civil Courts Act, 1972 are not

extended to the agency areas, the Courts constituted under the Civil Courts Act cannot entertain the suits in respect of the matters over the agency areas where whole of the cause of action arises.

He relied upon a Division Bench judgment of this Court in the case of Seepuri Nagabhushanam and Others Vs. Secretary to Government, Panchayat Raj Government of Andhra Pradesh, Hyderabad, , wherein a Writ Petition filed questioning the validity of the notice issued by the Governor in exercise of the powers vested in him in Para 5 of the Schedule V of the Constitution of India modifying the Panchayath Samithi Act by adding subsection (1) to Section 7 of A.P. Panchayat Samithi and Zilla Parishad Act and Vice-Presidents of every Panchayat Samithi in Scheduled Areas to the Members of the Panchayat Samithi belonging to the Scheduled tribes was dismissed on the ground that the said notification is not ultra vires the powers of the Governor and it is valid. It was observed in the said decision that the Constitutional makers have vested the power in the Governor to apply or not to apply a law of the Parliament or of the Legislature of the State notwithstanding anything contained in the Constitution with such notifications or exceptions as the Governor may deem it fit, they were empowering him to apply the law, with the power of amendment of the law as intended to be applied in the Scheduled Area. The power is granted mainly to protect the interest of the Scheduled Area or the persons residing in the Scheduled Area in which no doubt the majority of the persons are Scheduled Tribes. The Governor of the State is bestowed with the responsibility for giving the special protection to the Tribal area which are declared by the President. This case is of no help to the contentions of the respondents as the Governor has not extended the provisions of the Civil Courts Act in the Scheduled Area.

He relied upon the judgments of the Supreme Court in the case of Hukumchand Mills Ltd. Vs. The State of Madhya Bharat and Another, and the case of Union of India Vs. Khazan Singh, , for the proposition of law that "it is well settled that merely a wrong reference to the power under which certain actions are taken by Government would not per se vitiate the actions done if they can be justified under some other power under which the Government would lawfully do these acts. It is settled proposition of law that when the exercise of power can be justified under any provisions of law, then non-mention of the said provision in the order cannot invalidate the same". These two cases are of no help because there is no wrong mention of provision or non-mention of any provision under the notifications and the said notifications are issued u/s 12 of A.P. Civil Courts Act establishing the Courts of the Senior Civil Judges and Junior Civil Judges and the said Courts cannot presume that the said notifications are also issued u/s 1(3) of the A.P. Civil Courts Act issuing a notification appointing the date on which all the provisions of A.P. Civil Courts Act came into force in the Scheduled Areas.

Another judgment relied upon in the case of Ram Kirpal Bhagat and Others Vs. The State of Bihar, , the Hon"ble Supreme Court of India while dealing with the

Scheduled Areas and the law applicable to the Scheduled Areas under paragraph 5 of the Fifth Schedule in paragraph 22 held as follows:

"..... Paragraph 5 in Fifth Schedule deals with the laws applicable to Scheduled Areas. Sub-paragraph 2 of Paragraph 5 enacts that the Governor may make regulation for the peace and good Government of any area in a State which is for the time being a Scheduled Area. Under sub-paragraph 3 of Paragraph 5 the Governor may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question. It may be stated that a contention was advanced by the Counsel for the appellants that Section 92 of the Government of India Act, 1935 was still in operation and the Governor could only act under that Section. This contention is utterly devoid of any substance because Section 92 of the Government of India Act, 1935 ceased to exist after repeal of the Government of India Act 1935 by Article 395 of the Constitution. It was contended that the power to make regulations did not confer power on the Governor to apply any law. It was said that u/s 92 of the Government of India Act, 1935 a Governor could do so but under the Fifth Schedule of the Constitution the Governor is not competent to apply laws. This argument is without any merit for the simple reason that the power to make regulations embraces the utmost power to make laws and to apply laws. Applying laws to any area is making regulations which are laws. Further the power to apply laws is inherent when there is power to repeal or amend any act or an existing law applicable to area in question. The power to apply law is really to bring into legal effect Sections of an act as if the same act had been enacted in its entirety. Application of laws is one of the recognized forms of Legislation. Law can be made by referring to a statute or by citing a statute or by incorporating a statute or provisions or parts thereof in a piece of legislation as the law which shall apply."

As seen from the aforesaid Constitutional judgment of the Hon'ble Supreme Court of India, applying law to an area is making regulations which are laws. Admittedly, in the case of the Scheduled Areas, the Governor did not extend any of the provisions of the A.P. Civil Courts Act and therefore, the civil Courts established under the A.P. Civil Courts Act cannot be conferred any powers to try the suits in respect of the Scheduled Areas, and therefore, the said decision of the Supreme Court is of no help to the respondents but it strengthens the contentions of the petitioners.

He relied upon a Division Bench judgment of this court in case of Ashifaquddin and Others Vs. Mohd. Azizuddin and Others, , in support of his contention that the ordinary civil Courts have jurisdiction to entertain a suit between persons not belonging to Scheduled Tribes, in respect of lands situated in the Scheduled Areas of Telangana in the State of Andhra Pradesh, The Division Bench of this Court proceeded on the analogy that the provisions barring the jurisdiction of civil Courts should be strictly construed and unless there is a specific provision barring the jurisdiction of the civil Courts, the Courts cannot infer bar of

jurisdiction by a process of implied reasoning and there is no provision in the Agency Rules expressly barring the jurisdiction of civil Courts in respect of suits relating to disputes arising between on-tribals, nor can it be necessarily implied that the jurisdiction of civil Courts is barred to try such suits, and observed that there are reasons to reject the contention that the ordinary Courts have no jurisdiction to entertain suits relating to disputes arising in Scheduled Areas.

Paras 26, 27, 28, 29 and 30 of the judgment are extracted as follows:

"26, Firstly, the ordinary civil Courts constituted under the Andhra Pradesh Civil Courts Act (No.19 of 1972) have jurisdiction over the entire area included in the Scheduled Areas falling within the limits of their territorial jurisdiction and also in respect of disputes where the cause of action arises within their respective jurisdictions. The Civil Procedure Code, 1908, extends to the whole of India including the Scheduled Areas except as mentioned in sub-sections (3) and (4) of Section 1 CPC.

27. It is provided under sub-section (4) of Section 1 CPC (as amended) that "In relation to the Amindivi Islands, and the East Godavari, West Godavari and Visakhapatnam Agencies in the State of Andhra Pradesh and the Union Territory of Lakshadweep, the application of the Code shall be without prejudice to the application of any rule or regulation for the time being in force in such Islands, Agencies or such Union Territory, as the case may be, relating to the application of this Code."

28. So far as the Scheduled Areas in Telangana area are concerned, there is no such limitation as mentioned in sub-section (4) of Section 1 CPC (as amended). Therefore, by virtue of the provisions of Section 9 CPC the ordinary civil Courts have jurisdiction to entertain all disputes of a civil nature arising in the Scheduled Areas unless their jurisdiction is expressly or implied barred.

We have already mentioned that the Agency Rules were primarily intended for the benefit of the Scheduled Tribes and we do not see any reason or justification why the jurisdiction of ordinary civil Courts should be barred from trying suits relating to disputes between non-tribals.

29. Further Para 5 of the Fifth Schedule to the Constitution, empowers the Governor by public notification to direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification.

30. In the instant case, no notification was made by the Governor excluding the application of the Andhra Pradesh Civil Courts Act or the CPC to any Scheduled Area or part thereof and therefore the civil Courts have jurisdiction to entertain suits between non-tribals."

As seen from the aforesaid Paragraph 30 of the judgment, it was held that no notification was made by the Governor excluding the application of the provisions

of the Andhra Pradesh Civil Courts Act or the CPC to any Scheduled Area or part thereof and therefore, the civil Courts have jurisdiction to entertain suits between non-tribals. By the said observation, Their Lordships have obviously missed the notification issued by the Governor of Andhra Pradesh in G.O. Ms. No. 1573, Home (Courts-A), Department, dated 30-10-1972 in exercise of the powers conferred by sub-section (3) of Section 1 of the A.P. Civil Courts Act, 1972 under which all the provisions of the Civil Courts Act are not made applicable to the Scheduled Areas of the State, and therefore, there is a clear exclusion of jurisdiction of the civil Courts over the Scheduled Areas to entertain the suits whether between the tribals or non-tribals.

When the civil Court jurisdiction is ousted specifically by the said notification and the Government have not appointed any other different dates for different areas by any other notifications extending the provisions of the Andhra Pradesh Civil Courts Act, 1972, the civil Courts constituted u/s 12 of the Andhra Pradesh Civil Courts Act, i.e., the Courts of the Senior Civil Judges and Junior Civil Judges of Kothagudem and Sattupalli cannot assume the powers under the guise of the notifications issued by the Government under Sections 12(1), 15(1) and 17(1) of the Civil Courts Act. As long as the provisions of the Civil Courts Act are not extended over the Scheduled Areas, the question of conferring jurisdiction on the Civil Courts by the Government in consultation with the High Court under G.O. Ms. No.571, Home (Courts-A), dated 18-9-1981, and G.O. Ms. No.198, Home (Courts-A), dated 20-4-1989 does not arise and the said notifications insofar as the Scheduled Areas are concerned, is without jurisdiction and non-est in law. The observation of the Division Bench that the jurisdiction of the civil Courts is not barred either expressly or implicitly either by the agency rules or under the Civil Courts Act is incorrect in view of the aforesaid notification issued u/s 1(3) of A.P. Civil Courts Act. There is no dispute that if any part of the cause of action arises outside the agency area and within the jurisdiction of the civil Courts, the concerned civil Courts will have the jurisdiction to entertain the suits.

Another judgment cited in the case of Bethi Ramswamy and another Vs. Madala Seetharamaiah, , the learned single Judge without considering the said notification dated 30-11-1972, relying on the Division Bench judgment in the case of Ashifaquddin, (supra), held that the civil suit is maintainable in a regular civil Court if the parties to the dispute are non-tribals. The said judgment is also per incuriam as the notification dated 30-11-1972 not extending the provisions of A.P. Civil Courts Act in the Scheduled Area is not considered.

The learned Counsel appearing for the respondents further submitted that His Lordship Sri Justice B. V. Ranga Raju in J. Navarathan Kumar v. Nagarjuna Grameena Bank and another, SA No.118 of 1989 dated 20-11-1997, wherein on the facts of the case, it was observed that it is not clear as to whether any notification under Andhra Pradesh Civil Courts Act was in fact issued including the Scheduled Areas at Kothagudem and His Lordship was of the opinion that there is no definite material that by the date of filing of the suit (2-11-1983). The

Bhadrachalam Revenue Mandal was outside the jurisdiction of the Court of Kothagudem and without considering the said notification dated 30-10-1972 where all the provisions of the Civil Courts Act have no application to the Scheduled Areas is of no help to the petitioners.

12. It is submitted by the learned Counsel for the petitioners that the learned Judge Ms. Justice S. V. Maruthi in *Nallaparaju Balabhadra Raju v. Datla Subhadrayamma*, SA No.420 of 1988 dated 7-9-1994, held that the notification dated 30-10-1972 issued u/s 1(3) of A.P. Civil Courts Act while bringing into force all the provisions of the A.P. Civil Courts Act in the whole of the State of Andhra Pradesh with effect from 1-11-1972 excluded the Scheduled Areas of the State, was not brought to the notice of the learned Judges in the case of *Ashifaquddin*, (supra), and therefore, the judgment of the aforesaid Division Bench is per incurium. The learned Judge further held that in view of the notification dated 30-10-1972 under which the A.P. Civil Courts Act was not brought into force in the Scheduled Areas, the Subordinate Judge of Kothagudem has no territorial jurisdiction to try the suits in relation to the matters which arose in the Scheduled Areas irrespective of the fact whether the parties are tribals or non-tribals when the cause of action arises within the Scheduled Area.

13, Sri A. Rangacharyulu, learned Counsel appeared as *Amiens Curiae* supported the contentions of the learned Counsel for the petitioners in the Civil Revision Petitions and submitted that as the civil Courts have inherent lack of jurisdiction, the decree passed by the Court is a nullity, and therefore, the objection taken by the learned Counsel for the respondents that no objection was taken at the time of trial of the suit cannot be accepted in view of the judgments in *Kiran Singh and Others Vs. Chaman Paswan and Others*, , *The Bahrein Petroleum Co. Ltd. Vs. P.J. Pappu and Another*, , *Sunder Dass Vs. Ram Prakash*, , *Mahadeo Prasad Singh and Another Vs. Ram Lochan and Others*, and *Sushil Kumar Mehta Vs. Gobind Ram Bohra (Dead) through his Lrs.*, . It is relevant to extract a portion of Paragraph 26 of *Susheel Kumar Mehta* 's case (supra).

"..... A decree passed by a Court without jurisdiction over the subject matter or on other grounds which goes to the root of its exercise or jurisdiction, lacks inherent jurisdiction. It is a *Coram non iudice*. A decree passed by such a Court is a nullity and it is non est. Its invalidity can be set up whenever it is brought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. The defect of the jurisdiction strikes at the authority of the Court to pass a decree which cannot be cured by consent or waiver of the party".....

Therefore, the said Courts of Senior and Junior Civil Judges of Kothagudem and Sattupalli who were appointed under colour of a lawful authority were consequently found that they had no jurisdiction to try the suits and the judgments rendered while functioning under the colour of office are declared invalid and their functions are void but the decrees passed by them which have already been executed are- validated in view of the judgment in the case of J.

Rajasekhar v. G. Immanuel 1976 (1) APLJ 137 .

In another judgment in the case of Chityala Dhanalakshmi and another v. Mandrapu Kamakshamma, CRP No.1418 of 1990 dated 15-10-1999, His Lordship Sri Justice N.D. Patnaik held that the Subordinate Judge's Court, Khammam cannot execute the decree but has to forward the decree to the Agent of the State Government, Khammam, for execution as provided in Rule 35 of the Agency Rules.

14. None of the Counsel for the respondents are able to state that there is any notification issued by the Government appointing the date for the application of any of the provisions of the Andhra Pradesh Civil Courts Act come into force in any of the Scheduled Areas. It was argued that only after the Division Bench judgment in Ashifaquddin's case (supra), the cases were instituted in the civil Courts under the guise of the said notifications issued by the Government conferring the territorial jurisdiction over the civil Courts at Kothagudem and Sattupalli even though the provisions of the civil Courts Act are not made applicable to the Scheduled Areas. I am in agreement with the judgment of the learned Judge Ms. Justice S.V. Maruthi in Second Appeal No.420 of 1988 dated 7-9-1994 and all the decrees passed by the civil Courts in respect of where the whole of the cause of action arose in the Scheduled areas are nullity and void.

15. Insofar as the writ petitions are concerned, the prayer is to declare that the impugned action of the learned Subordinate Judge, Kothagudem, in not adjudicating the OPs., as void and to issue a writ of mandamus directing the learned Subordinate Judge to dispose of the OPs. Insofar as giving a direction to the learned Subordinate Judge to dispose of the OPs., is concerned, as the learned Judge has no jurisdiction over the Scheduled Areas, as all the provisions of the civil Courts have no application over the Scheduled Areas, the Subordinate Judge, Kothagudem has rightly refused to entertain the same. If there is any notification issued by the Government u/s 3(d) of the Land Acquisition Act, 1894, appointing the learned Subordinate Judge of that Court as a Special Judicial Officer, there cannot be any hesitation for the learned Subordinate Judge to entertain the Original Petitions and dispose of the same. But in the absence of any notification, I cannot issue any writ as prayed for and accordingly I do not see any merits in the writ petitions and they are accordingly dismissed without costs.

16. It is true that the Agency Laws have been made to administer and control the Scheduled Areas for the peace and good Government of Agency Areas and the Civil jurisdiction has been conferred on the Agency Courts. But the said intentment of the Constitution has been frustrated as the Agency Courts are not able to dispose of the cases years together and not able to create peace over the Scheduled Areas and they are not able to function as expected in the V Schedule of the Constitution and the "Agency Laws. It is also pertinent to note that when the territorial jurisdiction of Bhadrachalam was excluded from Kothagudem Courts, the High Court issued orders in Roc.No.570/E-I/93 dated 29-3-1995 in exercise of powers u/s 24(b)(ii) of the Code of Civil Procedure, transferred 64

Original Suits and 138 OriginalPetitions pertaining to Bhadrachalam Revenue Division from the file of the Subordinate Judge, Kothagudem to the file of the Agent to the Government, Khammam, for disposal according to law. It is submitted that all the said cases pertaining to the years 1989 to 1993 are still pending without disposal. Thus, it is submitted by the learned Counsel appearing for the respondents that the Agency Courts are not able to dispose of the cases and their functioning has utterly failed and it is totally detriment to the interest of the people residing in the Agency Areas. It is also brought to my notice that under Rule 57 of the A.P. Agency Rules, the Agent to the State Government shall submit to the High Court in such form on such dates as the High Court may direct, statement of the business done by him, by the Agency Divisional Officers and by the Agency Munsifs, but not even a single Report with regard to the business done by them with regard to the administration of the civil Justice has been submitted to the High Court by any of the Agent to the Government. Thus, it is submitted that it is just and necessary to confer the civil jurisdiction over the Scheduled Areas on the civil Courts also. It is for the State Government to take expeditious steps as early as possible to issue any notification extending the provisions of the Civil Court Acts even with retrospective effect in the Scheduled Areas for the peace and good Government and for the speedy disposal of the civil cases in the Scheduled Areas.

17. In the result, the civil revision petitions are allowed and the judgments and decrees passed by the civil Courts are declared as null and void and without jurisdiction and not executable. No costs.