

(1977) 10 AP CK 0015

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 1126 and 4527 of 1975, 3238 of 1976 and Writ Appeal No. 355 of 1977

Meram Pocham and Another

APPELLANT

Vs

The Agent to the State Government, (Collector), District
Adilabad and Others

RESPONDENT

Date of Decision : 25-10-1977

Acts Referred:

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 47, 50
Andhra Pradesh Scheduled Areas Land Transfer Regulations, 1959 — Section 3
Transfer of Property Act, 1882 — Section 53

Citation : AIR 1978 AP 242

Hon'ble Judges : Samasiva Rao, J; Jayachandra Reddy, J

Bench : Division Bench

Advocate : Narishma Reddy, for L. Jaisree, Veerendra Bhadhur Saigal and B. Subhasan Reddy, for the Appellant; C. Anandha Rao, of V. Subbarayudhu, Government Pleader for Industries Government Pleader for Excise, for the Respondent

Judgement

Samasiva Rao, J.—In the three writ petitions a common question of some legal complexity arises. This complexity is deepened by seemingly different views expressed by learned Judges of this Court and some other High Courts. That was why our learned brother Jeevean Reddy, J. referred W. P. No. 4527 of 1975 to a Division Bench and our learned brother Madhava Reddy, J. did the same with W. P. No. 3238 of 1976. In the other writ petition the same question arises.

2. In all the three petitions the alienations of lands have been set aside by the Special Deputy Collector under the Andhra Pradesh Scheduled Areas Land Transfer Regulation of 1959 (hereinafter referred to as "the Regulation"). The lands are situated in Scheduled Areas. The Regulation as extended to the Telengana Area on and from 1-12-1963. Though the dates differ from case to case, there were contracts of sale in respect of lands in Scheduled areas by

tribals in favour of the petitioners, who are not tribals, before 1-12-1963. Some amounts were paid under the contracts of sale and possession also was delivered to the petitioners when the contracts were executed. However, sanction of the appropriate authority was not obtained, under S. 47 of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as the "Hyderabad Tenancy Act") which was on the statute book at that time. After the regulation of 1959 was extended to the Telangana Area on 1-12-1963 regular sale deeds were taken by the petitioners from their tribal vendors. No attempt was made to secure validation of the alienations under S. 50 -B of the Hyderabad Tenancy Act. The vendors challenged the validity of these sales under the provisions of the Regulation of 1959 and the Special Deputy Collector upheld the objection and held that the alienations were invalid in view of S. 3 of the Regulation and consequently directed that the lands be placed back in the possession of the vendors. In some of the cases appeals were preferred under S. 3 (a) (iii) of the Regulation of the Agency Divisional Officer but they were filed before the State Government. The petitioners came to this Court with these writ petitions for quashing the order of the Special Deputy Collector. These facts are undisputed.

3. The Special Deputy Collector held that the transfers of the lands, which are in the Scheduled Areas, by vendors, who are members of the Scheduled Tribes, to the petitioners, who are non-tribals, were null and void in view of the provisions of S. 3 of the Regulation which were extended to the Telangana Area on 1-12-1963. Exercising his powers u/s 3 (2) (a) he directed that the lands be restored to the transferors since they were willing to take the lands. In fact the transferors initiated the proceedings and actively participated in them. The petitioners challenged the validity of this view of the Special Deputy Collector and of the Appellate Authority wherever it has been rendered, contending that the agreements in their favour were accompanied by simultaneous delivery of possession. Consequently by the time the Regulation came to be applied to the Telangana area in which the lands are situate, their right to be in possession of the lands had come to be safeguarded by the provisions of S. 53- A of the T. P. Act and so, either before 1-12-1963 or thereafter the transferor or any person claiming under him is debarred from enforcing against the petitioners and persons claiming under them any right in respect of the property. They maintained that every requirement of S. 53 -A of the T. P. Act was satisfied in these cases and therefore despite the subsequent application of the Regulation to the Telangana Area on 1-12-1963 they continue to enjoy the protection of S. 53- A.

4. Therefore, the crucial question that falls for decision in the writ petitions is whether the petitioners, who had obtained contracts of sale accompanied by delivery of possession without obtaining the sanction under S. 47 of the Hyderabad Tenancy Act and without later securing a validation certificate u/s 50- B, can claim the protection of S. 53 -A of the T. P. Act after the Regulation came to be applied to the areas in which the lands, which they purported to have

purchased, are situate. Chinnappa Reddy, J. and Gangadhara Rao, J. took the view that in such cases the safeguard of S. 53- A would not be available to the purchasers while Kuppaswamy, J. held that the protection would continue to be available to the purchasers despite the Regulation. There are other decisions of this Court also in addition to the decisions of the Supreme Court and those of the Mysore and Bombay High Courts which have bearing on this question. Our task now is to resolve this apparent conflict.

5. Before we proceed further, it is necessary to have a look at the material provisions of the relevant sections. The Hyderabad Tenancy Act was passed in 1950, one of its objects being to regulate the alienation of agricultural lands. Section 47 as it was originally made (it may be noted here that it was subsequently amended and was later deleted) provided that notwithstanding anything contained in any other law for the time being in force or in any decree or order of a Court, no permanent alienation and no other transfer of agricultural land shall be valid unless it has been made with the previous sanction of the Tahsildar. According to sub-sec (2) applications for the sanction shall be made and disposed of in accordance with the prescribed procedure. Sections 48 and 49 stipulated certain restrictions on the grant of such sanction. The expression "Permanent alienation" was defined under S. 2 (o) as including "any sale, exchange or gift and any transfer of a right of occupancy or of the patta of holding but does not include any disposition by will." However, the word "transfer" as such was not defined in the Act. It is worthy of note that even transfer of a right of occupancy is included in definition of the expression "permanent Alienation" for which also previous sanction of the Tahsildar was required under S. 47.

6. By Act 6 of 1964 a new Section viz., Section 50-B was inserted in the Act for the purpose of "validation of certain alienations and other transfers of agricultural lands". When it was inserted, Ss. 47 and 48 were retained in the statute book. Section 50-B was only an addition. As it was originally introduced by Act 6 of 1964 it had only three sub-section. By Act 12 of 1969, which was published in the Gazette on the 18th of March, 1969, sub-s. (1) of S. 50-B was substituted and a proviso was added to sub-s. (2). By the same Act 12 of 1969 and with effect from 18th March, 1969 and with effect from 18th March, 1969 Ss. 47, 48, 49, 50 and 50-A of the Act were deleted. When it was originally enacted sub-s. (1) of S. 50 laid down that notwithstanding anything in the Chapter, where any alienation or other transfer of agricultural land took place on or after 10th June, 1950 but before the 21st of Feb., 1961 and where possession of such land was given to the alienee or transferee before the 21st Feb., 1961, he may, within one year from such date as may be prescribed, apply to the Tahsildar for a certificate declaring that such alienation or transfer is valid. The reconstituted sub-s (1) as per Act 12 of 1969 reads:

"(1) Notwithstanding anything in this chapter, where any alienation or other transfer of agricultural land took place ----

(a) on or after the 10th June, 1950 but before the date of coming into force of the Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961 and where possession of such land was given to the alienee or transferee before such date of coming into force; and

(b) on or after the coming into force of the Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961, but before the date of the commencement of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands (Third Amendment) Act, 1969 and where possession of such land was given to the alienee or transferee before such commencement and such alienation or transfer is not inconsistent with the provisions of the Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961;

the alienee or transferee may, within such period as may be prescribed, apply to the Tahsildar for a certificate declaring that such alienation or transfer is valid".

Sub-section (2) provided for the procedure which should be adopted on receipt of an application as contemplated by sub-s. (1). It requires the Tahsildar to make such enquiry as may be prescribed and if he was satisfied that the consideration, if any, payable to the alienor or transferor has been paid or has been deposited within such time and in such manner as may be prescribed, he shall require the alienee or the transferee to deposit in the office of the Tahsildar an amount equal to the registration fees and the stamp duty that would have been payable had to alienation or transfer been effected by a registered document in accordance with the provisions of the Indian Registration Act, 1908. The said sub-section proceeds to lay down that on the deposit of such amount, the Tahsildar shall issue a certificate to the alienee or the transferee declaring that the alienation or transfer is valid and such certificate shall, notwithstanding anything in the Indian Registration Act, 1908, be conclusive evidence of such alienation or transfer as against the alienor or transferor or any person claiming interest under him. The proviso to this sub-section added under Act 12 of 1969 reads as follows:

"Provided that where an alienation or transfer has been effected by a registered document, the Tahsildar shall adjust the amount paid by the alienee or transferee as registration fees and the stamp duty towards the amount required to be deposited under this sub-section; and if the amount so paid by the alienee or transferee is less than the amount required to be deposited by him, the Tahsildar shall require him to deposit the balance." Sub-section (3), however, stated that the validation of any alienation or transfer of land under sub-s. (2) shall not affect the right accrued to any person under S. 37-A or S. 38 of S. 38-E.

7. It should be noted here that Act 11 of 1965 substituted the words "within three years from such date as may be prescribed" for the original words "within one year from such date as may be prescribed". Act 12 of 12 of 1969 extended the said period for four years and Act 19 of 1969 for six years. Finally the benefit of validation conferred by S. 50-B ended with 31st of March, 1972. Thereafter there was no possibility of getting the alienations validated.

8. From the above narration of the changes in the Hyderabad Tenancy Act in respect of S. 47 and S. 50-B, it is manifest that the two provisions coexisted from 1964 to 1969. In 1969 Section 47 along with certain other provisions was deleted and only S. 50-B was on the statute book. The benefit of validation was extended up to 31st March 1972. The purpose behind these changes is not far to seek. As we have already noticed, one of the purposes of the Hyderabad Tenancy Act is to regulate the alienation of lands. In pursuance of that purpose, Chapter V was made imposing certain restrictions on transfers of agricultural lands. Section 47 was the very first provision in that Chapter. It laid down that no permanent alienation or no other transfer of agricultural land shall be valid unless it has been made with the previous sanction of the Tahsildar. This declaration is very clear and specific. If there is any permanent alienation or transfer of agricultural land without the previous sanction of the Tahsildar, that would be invalid. However, the Legislature obviously took note of the fact that there had been very many permanent alienations or other transfers of agricultural lands which had taken place without the previous sanction of the Tahsildar. In order to obviate the confusion and injustice that might result therefrom, the Legislature introduced S. 50-B in the year 1964 for validation of certain alienations and other transfers of agricultural lands. Till 1969 until S. 47 was deleted both the sections coexisted. The position then was that the prohibition against alienations without previous sanction of the Tahsildar continued and at the same time transferees and 10th June, 1950 but before 21st Feb., 1961 who had also obtained possession, were given an opportunity to get the alienations in their favour validated within one year from the prescribed date. In 1969 S. 47 was altogether omitted; only S. 50 with the changes above mentioned was retained.

9. The position which emerged from the amendment of S. 50-B was that alienees of agricultural lands, who had obtained possession between 10th June, 1950 and before the Ceilings Act of 1961 and also after the Ceilings Act of 1961 but before the Hyderabad Tenancy Act (Third Amendment) 1969, were enabled to secure validation of their alienations. It is important to note that the facility of validation would be available only to those transferees who had obtained possession of the land. If all the requirements of S. 50-B are satisfied, the alienee or transferee may apply to the Tahsildar for a certificate declaring that his alienation or transfer was valid. Sub-section (2) prescribed the procedure which should be followed on making of such application. The Tahsildar shall make the necessary enquiry. In the first place, he should satisfy himself that the consideration payable to the alienor has been paid or has been deposited. He should also require the alienee to deposit the registration fee and the stamp duty. If the Tahsildar is satisfied in these respects, then only he shall issue a certificate to the alienee declaring that the alienation or transfer in his favour is valid and such certificate shall be conclusive evidence of the alienation or transfer against the alienor or any person claiming under him. It must necessarily follow from this that if there is no validation certificate, the alienation or transfer, though accompanied by possession, would not be treated as valid. This facility was

afforded to the alienees with the obvious intention of giving them an opportunity to get their alienations or transfers validated up to 31st March, 1972 though they were invalid for want of previous sanction by the Thasildar.

10. Another aspect which has to be examined at this juncture is as to the nature of the alienation made under a contract of sale accompanied by delivery of possession. It is worthy of note that S. 50-B provided for validation of those alienations and transfers which had taken place between years 1950 and 1969 only which were accompanied by possession. If the alienee had not been given possession, then he could not apply for validation under S. 50-B. The petitioners before us very much emphasise so that fact that the alienations in their favour were not simply based on contracts of sale but were also accompanied by possession and therefore S. 53-A of the T. P. Act would give them protection and any subsequent law made thereafter would not defeat their right to be in possession. That is why we are emphasising this feature of S. 50-B of the Hyderabad Tenancy Act which also made obtaining of possession by the alienee one of the requirements for validation.

11. The three transactions which are involved in the writ petitions before us are contracts of sale. Section 54 on the T. P. Act specifically declares that contract of sale does not, of itself, create any interest in or charge on such property. A contract, in pursuance of which possession of the property has been given to the alienee, is not a contract of sale simpliciter and has a higher status, for it creates an interest in the property that is agreed to be sold under the contract. That higher interest is stated in S. 53-A according to which the transferor or any person claiming under him is debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession other than a right expressly provided by the terms of the contract.

12. We will now go back to the Hyderabad Tenancy Act. We have already noted that S. 47, which was in force right from 1950 till 1969 and which was in force when the contracts of sale in these three cases were entered into, declared that no permanent alienation and no other transfer of agricultural land shall be unless it has been made with the previous sanction of the Tahsildar. "Permanent alienation," as we have already noted, is defined in S. 2 (o) of the Act within the scope of which expression "transfer of a right of occupancy" is included. When a contract of sale is entered into accompanied by possession, it is clearly transfer of a right of occupancy. This conclusion is further reinforced by the provisions of S. 53-A of the T. P. Act. Therefore, the contracts of sale accompanied by possession, which are the subject-matters of the three writ petitions, were "permanent alienations" and still admittedly no previous sanction of the Tahsildar had been obtained. From this, it must necessarily follow that the possession given along with the contracts of sale was invalid and unlawful. It is true that the present petitioners obtained possession and continued in it and yet, their possession was only an invalid and unlawful one. Certainly, S. 53-A of the T. P.

Act postulates taking possession of the property or continuing in possession of the property in part performance of the contract only in a lawful manner. It cannot be predicated that S. 53-A purports to give protection to those transferees who have taken possession of the property in a manner contrary to the law which was in force and applicable to them. In our view, S. 53-A protects only such possessions which were valid and lawful and does not safeguard possessions which are invalid and unlawful.

13. At this juncture we should refer to S. 98 of the Hyderabad Tenancy Act which provides:

"Any person unauthorisedly occupying or wrongfully in possession of any land -

(a) the transfer of which either by the act of parties or by the operation of law is invalid under the provisions of this Act.

(b) xx xx xx xx xx

(c) xx xx xx xx xx may, if the said provision do not provide for the eviction of such person, be summarily evicted by the Collector."

Since the possession of the petitioners was wrongful and since the transfer of S. 47, they became liable to be summarily evicted by the Collector.

14. We draw support to these conclusions of ours from certain Bench pronouncements of this Court. In Syed Jalal and Others Vs. Tarrgopal Ram Reddy and Others, , Jaganmohan Reddy, C. J. and Parthasarathi, J., held that under S. 47 there can be no bar to the maintainability of a suit for specific performance of an agreement to direct the defendant (seller) to apply for permission under S. 47 and after he obtains it to execute s sale deed. This result would follow whether or not there was a specific term in the agreement that permission would be obtained under S. 47 and that thereafter a sale deed will be executed. Having said this, and with which we are in respectful agreement, the learned Judges proceeded to lay down that what is prohibited and what is invalid according to S. 47 is transfer or alienation of legal right of interest which confers a right to possession of agricultural land if its is without the permission of the Tahsildar Agreement to enter into transactions to confer such a right, title and interest, if the provision of law are complied with, namely, after obtaining the permission of the Tahsildar are not prohibited. Nor do they by themselves confer a right to possession so that if any possession is delivered in pursuance thereto, it cannot be said that that possession has been delivered in conformity with the statute or in a manner that would be according recognition thereunder. A contract of sale followed by possession, by the general law, would subject to the fulfilment of the requirements of S. 53-A of the T. P. Act, have enabled a person in possession to use it as a shield to defend his possession. But having regard to the provisions of S. 47 read with S. 98, no right to possession capable of being upheld under the special enactment can be conferred by means of a permanent alienation or other transfer unless the prior permission of the Tahsildar is obtained. The leaned

Judges proceeded to lay down that if possession is wrongful or unauthorised, no suit for a permanent injunction or for delivery of possession can be brought. The learned Judges continued to observe that when S. 47 refers to other transfers of agricultural land, it is presumed that a permanent alienation is a transfer and permanent alienation includes the several kinds of transfers referred to therein viz., sale, exchange, or gift which under the general law, namely, the T. P. Act, would come within the definition of transfer of property. Transfer of a right of occupancy or a patta of a holding in so far as the Land Revenue Act of 1317 Fasli is concerned, would equally be a transfer of all that is necessary to effectually transfer agricultural land and vest a title in the person to whom it is transferred.

15. We will then refer to the decision of Gopal Rao Ekbote, J. (as he then was) and Sriramulu, J. in L. P. A. No. 139 of 1970, D/- 18-2-1972 : (ILR (1974) AP 119). That decision was in a Letters Patent Appeal preferred against the decision of Madhava Reddy, J. given in S. A. No. 520 of 1968 on 20th of July, 1970 : (ILR (1972) AP 1313). One of the questions decided by Madhava Reddy, J., and considered by the Division Bench in the appeal was whether the deletion of S. 47 and introduction of S. 50-B makes the previous contracts of sale legal and effective which contracts were considered illegal in view of S. 47. The Division Bench held that mere deletion of S. 47 or introduction of S. 50-B does not by itself validate all the transfers which were invalid and that such invalid and that such invalid transfers do not become legally enforceable unless a seal of approbation is put by the Tahsildar by granting a certificate validating the same. We shall refer to this aspect of the matter a little later. For the present, we are referring to this Bench decision for the purpose of showing that this Division Bench agreed with the view expressed in Syed Jalal and Others Vs. Tarrgopal Ram Reddy and Others, . In fact the learned Judges noted that the correctness of Syed Jalal's case was not challenged before them. After noting the main points decided in Syed Jalal's case (supra) the Division Bench observed:

"What follows from the said decision is that while the agreement to sell is valid the possession delivered in pursuance of the agreement is unauthorised. The vendee therefore can institute a suit for specific performance but cannot avail of the doctrine of part-performance."

16. On this point there is a recent decision of a Division Bench of this Court in C. R. P. No. 1233 of 1976, D/- 9-8-1977 rendered by our learned brothers Ramachandra Raju and Jeevan Reddy, JJ. It is short-noted at p. 28 of 1977 (2) APLJ (Chenna Reddy v. Hanumanth). In this case the Division Bench was considering the relevant scopes of Ss. 47 and 50-B of the Hyderabad Tenancy Act. The learned Judges held that on the date the transaction was entered into and the entire consideration money was paid by the respondent, possession of the lands purchased was given to the respondent by the petitioners and thus there is a transfer of the right to be in possession. Transfer of a right of occupancy can also mean transfer of a right to be in possession and enjoyment. In this view of the matter, the transaction entered into between the parties is a

permanent alienation as per the definition u/s 2 (o). It is a permanent alienation, S. 47 is attracted and if S. 47 is attracted S. 50-B is attracted and the respondent would be entitled to the validation certificate.

17. These three pronouncements of the Division Benches of this Court support the view we have expressed above that the possession given to the three petitioners in pursuance of the contracts of sale, without obtaining previous sanction of the Tahsildar under S. 47, was unlawful and S. 53-A of the T. P. Act would not safeguard that possession.

18. This was the position which was obtaining when the Regulation of 1959 was applied to the Scheduled areas in the Telangana Region. That is a regulation to regulate the transfers of lands in Scheduled areas and is clearly a social piece of legislation. It is essential to notice effect by including a non obstante clause therein. Despite any other law, transfers contrary to that provision are declared to be null and void. Going through the provisions of the Regulation, they would demonstrate beyond any doubt that its object is to prevent transfers of lands in the Scheduled areas in favour of persons who are not members of Scheduled Tribes or a society not composed solely of the members of the Scheduled Tribes. Its further aim is to set aside transfers of immovable property made in contravention of the law, to eject any person in possession of the property, and to restore it to the transferor or his heirs. If the transferor or his heirs are not willing, the appropriate authority may order assignment or sale of the property to any other member of the Scheduled Tribe. It is for this purpose very wide connotation is given to the word "transfer" in S. 2 (g), where by mortgage with or without possession, lease, sale, gift, exchange or any other dealing with immovable property, not being a testamentary disposition and a charge on such property or a contract relating to such property in respect of such mortgage, lease, sale gift, exchange or other dealing, are treated as transfers. It is true this Regulation has no retrospective effect and does not affect any valid transfers which had taken place before 1-12-1963 in the Scheduled Areas of the Telangana Region. If the transfer did not become final or if the transferee had not obtained indefeasible rights in the property by 1-12-1963, then the Regulation would certainly apply to such cases.

19. Then we go to the problem as to whether the subsequent deletion of S. 47 of the Hyderabad Tenancy Act would have the effect of automatically validating the alienations and transfers, though they were invalid on account of lack of sanction of the Tahsildar under that Section. If there was deletion of S. 47 simpliciter without anything more, possibly two views might have been possible. On the one hand, probably it could have been one hand, probably it could have been said that what had been the cause of invalidity of an alienation or transfer has been removed by the deletion of S. 47 and therefore it must be deemed that the original defect in the alienation or transfer must be deemed to have been cured or removed. On the other hand, it could be argued that what was invalid to start with could not be validated unless there is a special proclamation by the

Legislature or a provision under which such invalid alienations or transfers could be validated. However, in our view, this possibility of the existence of two views does not exist in so far as the Hyderabad Tenancy Act is concerned, particularly so in these writ petitions. Why we say that such situation does not exist in these cases particularly is that S. 47 was deleted in 1969 and the Regulation relating to the prohibition of alienations of lands in the Scheduled Areas by Tribals came to be applied to the Telengana Area on 1-12-1963 which was long before S. 47 was removed from the statute book. Even if it were to be argued that the removal of S. 47 would automatically validate the invalid alienations and transfers, the insurmountable hurdle in the way of the petitioners would arise in the form of the Regulation which came to be applied to their lands even on 1-12-1963. By virtue of the Regulation the invalidity, which was inhibiting the alienations or transfers in their favour by 1-12-1963 on account of lack of sanction under S. 47 of the Hyderabad Tenancy Act, could not be cured in respect of their rights and interests that might have existed earlier. It is true that upto 1-12-1963, that is to say, till the Regulations came to be applied to the Telengana Area, either the petitioners or their alienors could have applied to the Tahsildar for permission for the alienations or transfers thereby securing legal sanction to them. It is a moot point whether after the Regulation came into force of 1-12-1963 and before S. 47 was deleted in 1969 permission could be obtained for transfer in respect of these lands in the Scheduled Areas in view of S. 3 of the Regulation. However, we do not express any view on this point since it is not necessary to do so in these cases. The admitted fact remains that no attempt has been made either by the petitioners or their alienors for securing the required permission under S. 47 even after 1-12-1963 and before S. 47 was deleted.

20. There is yet another formidable objection to the validity of the transfers on favour of the petitioners. In 1964 S. 50-B was introduced for validation of the earlier invalid transfers. For five years thereafter till 1969 S. 50-B was part of the statute along with S. 47. The result was that even after 1964 no permanent alienation or transfer could be effected without the necessary permission from the Tahsildar. At the same time, the earlier invalid alienations for want of that sanction could be validated by taking recourse to S.50-B proceedings. In 1969 S.47 and the allied provisions were deleted and yet, S.50-B was retained. This is a very material and significant circumstance. Though S. 47 was deleted, thereby implying that from that date no permission was necessary for alienations or transfers, the earlier invalid transfers, which had taken place from 1950 to 1969, could be validated with the aid of the proceedings under S. 50-B. It would also be very pertinent to note that by Act 12 of 1969, which deleted s. 47 and the allied provisions from the statute book, substituted sub-sec. (1) of S. 50-B where under the invalid alienations, which had taken place from 10th June, 1950 right up to the date of the commencement of the Andhra Pradesh (Telengana Area) Tenancy and Agricultural Land (Third Amendment) Act, 1969 could be validated. We have already noted that originally as S. 50-B (1) stood when it was first inserted by Act 6 of 1964, only alienations from 10th June, 1950 till 21st of Feb.

1961 could be validated under that section. While deleting S. 47 and the allied provisions in 1969, Sub-sec. (1) of S. 50-B was altered by extending the period from 21st February 1961 till the third Amendment to the Hyderabad Tenancy Act 1969 was made. That is to say, under the newly altered S. 50-B as per Act 12 of 1969, even the alienations and transfers which were invalid right up to 1969, could be validated. In other words, even those alienations and transfers, which had been made without obtaining sanction under S.47 up to 1969 in which year that section was deleted, could be cured and made lawful by invoking the provisions of S.50-B. It is thus manifest that S. 50-B was made by the Legislature with a definite purpose and that purpose was clearly declared in the marginal note as "validation of certain alienations and other transfers of agricultural lands". As we have pointed out, very many alienations had been made contrary to Ss. 47, 48 etc., and the Legislature thought it just and proper to validate some of them. The alienations which could be validated, the manner which could be validated, the manner in which such validation could be made and the time within which that validation could be made and the time within which that validation could be sought were all prescribed in the Section. As it stood amended by 1969 Act, transfers, which had taken place between 10th June, 1950 and 1969 when the Third Amendment to the Hyderabad Tenancy Act was made where possession had been given and which were not inconsistent with the provisions of the A. P. Ceiling on Agricultural Holdings Act, 1961, were eligible for validation under the provision.

21. It is also very important to note that the last paragraph of sub-sec. (1) of the section enables the alienee or transferee to apply within such period as may be prescribed by the Tashildar for a certificate declaring that such alienation or transfer is valid. This sub-paragraph or sub-sec (1) makes it abundantly certain that though it is an enabling provision, in the sense that it permits the alienee or transferee under an invalid alienation or transfer, to apply for validation, the invalidity of the alienation would continue if there is no declaration under S. 50-B. This intention of the Legislature in making S. 50-B is further brought out by the last sentence of sub-sec (2) that on deposit of the amounts required, so it is provided in sub-sec (2), the Tahsildar shall issue a certificate to the alienee or transferee declaring that the alienation or transfer is valid and that such certificate shall be conclusive evidence of such alienation or transfer against the alienor or transferor or any person claiming interest under him. This part of the provision of sub-sec. (2) is practically, in the nature of enforcing the rights of an alienee or transferee under S. 53-A of the T. P. Act. The certificate under sub-sec. (2) could be granted only where possession had been delivered and where the alienee has paid the balance of consideration or deposited the same in the manner prescribed, if any unpaid purchase money was payable, and also on the deposit of the registration and stamp charges. Once that registration is given on the Tashildar reaching his satisfaction, it is declared to be conclusive evidence of the alienation or transfer as against the alienor or transferor any person claiming interest under him.

22. The similarity between the provisions of S. 50-B of the Hyderabad Tenancy Act and those of S. 53-A of the Transfer of Property Act is self-evident. It is thus manifest that while enacting S. 50-B of the Hyderabad Tenancy Act, the Legislature kept in view the provisions of S. 53-A of the T. P. Act. Therefore, even if delivery of possession in pursuance of the contract of sale was invalid and unlawful on account of the failure to secure the permission under S. 47, such possession and transfer could be validated under S. 50-B. To our minds, it necessarily follows that if the transferee or alienee did not avail himself of this opportunity of getting his alienation and possession validated under S. 50-B, he should suffer the consequences, since the transfer and delivery of possession in his favour remained invalid and unlawful. It is unnecessary for us, as we have already pointed out, to decide whether the three petitioners before us could apply for validation under S. 50-B in view of the Regulation which came to be applied to their areas on and from 1-12-1963. It is common ground that no applications have been made by the petitioners for validation under S. 50-B.

23. On account of the foregoing reasons we are of the view that S. 50-B was not merely an enabling provision but was also intended by the Legislature as a remedy for validating transfers and possessions which were invalid. Without such validation, the invalid transfer and delivery of possession remained invalid. This facility to get the invalid alienations declared as valid existed only up to 31st March, 1972, since the Legislature stopped further extension for such validation after that date. Those who did not apply under S. 50-B up to 31st March, 1972 would reap the result of having a invalid transfer and delivery of possession on their hands. The Legislature's refusal to extend the time beyond 31st March, 1972 does not validate the invalid transfers and delivery of possessions. If this was not the intention of the Legislature by enacting S. 50-B and amending it, then that section would be postulated that any provision of an enactment has been made without any purpose.

24. In this view we have taken, the opinion expressed by Parthasarathi, J. in *Hafeezunnisa V. Syed Arab* (1969) 2 A WR 317, that S. 50-B was merely an enabling provision and the omission of a party to take advantage of it does not put the validation itself in jeopardy is not correct. We also express our firm dissent from the further opinion of the learned Judge that the Legislature has, by necessary implication, made the provisions of Ss. 47 to 49, inapplicable to the cases of transfers specified in sub-sec. (1) of S. 50-B and that those transfers are exempted from the operations of Ss. 47 to 49. We are of the opinion that the learned Judge did not lay down the law correctly when he held that the absence of certificate under S. 50-B would not nullify the validation of the alienations or the exemption granted to them from the operation of the provisions of Ss. 47 to 49. We hold that this is not the correct meaning of Ss. 47 to 49 and S. 50-B and therefore it is not good law.

25. Now we will consider the different view-points expressed by our learned brothers of this Court and other Courts particularly in the light of the

pronouncement of the Supreme Court in Nathulal Vs. Phoolchand, .

26. The decision of Madhava Reddy, J. in S. A. 520 of 1968, D/- 20-7-1970 is the first decision in chronological sequence which was cited before us. The second appeal arose out of a suit for declaration of title and recovery of possession. The suit was sought to be resisted by the 1st defendant on the basis of part performance of a contract of sale in his favour contending that his possession could not be disturbed having regard to Ss. 47 and 50-B of the Hyderabad Tenancy Act. The 1st defendant pleaded that the plaintiff had been the highest bidder at a revenue sale but entered into an agreement with him for sale of the land and requested the Tashildar to finalise the sale in his name. The Tahsildar accordingly recommended to the Collector but the District Collector refused to accept the recommendation. Earlier in accordance with the contract the plaintiff put the 1st defendant in possession of the plaint schedule land in part performance of the agreement. The entire consideration was paid by 25th May, 1963. While considering the tenability of the 1st defendant's defence the learned Judge referred to the decision in Syed Jalal and Others Vs. Tarrgopal Ram Reddy and Others, , wherein it was held that the contract of sale was neither prohibited by S. 47 nor invalid in law and what was prohibited was a permanent alienation or other transfer of agricultural land. Therefore, a suit for specific performance of a contract of sale without prior permission under S. 47 could be maintained. Then dealing with the consequence of deleting S. 47 and the effect of S. 50-B the learned Judge observed that the deletion of S. 47 can operate only prospectively and if on the date of transfer or permanent alienation when S. 47 was in force, it cannot be contended that on that date the alienation was valid and the transfer of possession would also be valid. He also observed that S. 50-B could have reference only to transfers which were made at a time when Ss. 47 to 50-B were in force. The learned Judge expressed the view that S. 50-B by necessary implication, retrospectively validates the transfers of agricultural lands made when S. 47 was in force and were invalid for want of prior sanction of the Tashildar. But even otherwise, if the third Amendment Act is held to be prospective at least from 18th March, 1969 onwards, the possession under such agreements of sale cannot be deemed to be unauthorised and therefore the persons in possession would be entitled to invoke the provisions of S. 53-A to protect their possession. The possession which had been delivered to the 1st defendant might have been unauthorised at the time it was given but it cannot be deemed to be unauthorised in view of the fact that Ss. 47 and 50-A were deleted and a provision was made for obtaining a certificate declaring the transfer as valid. After the expression of this opinion there is the following significant observation by the learned Judge:

"There is yet time for obtaining such a declaration."

In that view of the matter, the 1st defendant was held to be entitled to successfully resist the suit for recovery of possession by invoking S. 53 of the T. P. Act. While dismissing the second appeal, the learned Judge granted leave. It is

to be remembered that this decision was rendered on 20th July, 1970 by which date there was still time for the concerned party to apply for the validation under S. 50-B. In fact that was the observation made by the learned Judge which we have extracted.

27. It is against this decision Letters Patent Appeal No.139 of 1970: (ILR (1974) A P 119), was preferred and Gopal Rao Ekbote, J. (as he then was) and Sriramulu, J. disposed of the appeal on 18th Feb. 1972. Earlier, we have had an occasion to refer to this judgement to point out that the Division Bench in this case expressed its agreement with the principles laid down in Syed Jalal and Others Vs. Tarrgopal Ram Reddy and Others, . Then the learned Judges proceeded to consider the views expressed by Madhava Reddy, J. in his judgement. The Division Bench expressed its dissent from the view take by Madhava Reddy, J. that S. 50-B was retrospective in its operation and validated the transfers of agricultural lands made even when S. 47 was in force. It was pointed out that S. 50-B was clearly retrospective in its operation and S. 50-B would not make all such contracts valid automatically. The learned Judges proceeded to observe that mere deletion of S.47 or introduction of S.50-B would not by itself validate all the transfers which were invalid and that such invalid transfers would not be legally enforceable unless a seal of approbation is put by the Tashildar by granting a certificate validating the same. But it could be made without any prior permission as was required when S. 47 was there. But the question had still to be answered whether possession delivered in pursuance of agreement to sell prior to 18-3-1969 could be defended by invoking S. 53-A of the T. P. Act.

28. Then reference was made to Syed Jalal and Others Vs. Tarrgopal Ram Reddy and Others, and the view expressed therein that possession delivered in pursuance of an agreement without sanction under S. 47 was unauthorised and then the Bench pointed out that the position materially altered after S. 47 was removed. Existence of S. 98 in the view of the Division Bench, did not deprive the purchaser from invoking the principles of part performance to protect his possession after S.47 was deleted. At the same time, the learned Judges pointed out that S. 53-A of the Transfer of Property Act predicates a valid contract , a contract of a type which could be specifically enforced and the section would not apply where the contract was invalid on any ground other than that it was not completed in the manner prescribed by the law. After pointing out this, the learned Judges of the Division Bench observed that the principle laid down in Syed Jalal's case that the agreement of sale was capable of being enforced in a suit for specific performance was complied with in that case and there was no reason why the plea of part performance should not be available to the defence. When once S. 47 was deleted, the possession given earlier would be considered as validly given. In such a case, the doctrine of part performance would validly be invoked. Having made all these observations, the Division Bench agreed with the final conclusion of Madhava Reddy, J. in the second appeal and dismissed the Letters Patent Appeal.

29. Two features are worthy of note in this decision of the Division Bench. One is that it expressed concurrence with the decision of the earlier Division Bench in *Syed Jalal and Others Vs. Tarrgopal Ram Reddy and Others*, . The second feature is that by deletion of S. 47 the possession, which was unauthorised until then, ceased to be unauthorised. This view was probably expressed in view of the fact that there was still time for validation of the contract of sale and the delivery of possession. We venture to make this inference because the decision of the Division Bench was rendered on 18th Feb. 1972 and the time of validation under S. 50-B was in force till 31st of March, 1972. Though the Division Bench did not specifically mention this, this inference is possible by the view expressed by the Division Bench that S. 50-B was not retrospective, and that until and unless the invalid transfers are validated, they (the invalid transfers) continue to be invalid. Therefore, we do not consider that this Bench Decision in Letters Patent Appeal No. 139 of 1970; (ILR (1974) A P 119), is in any way contrary to the view, we have expressed. Moreover this case was not concerned with the effect of S. 3 of the Regulation. Further the recent decision of a Division Bench in (1977) 2 APLJ 28 on the subject to which we have already made a reference has taken the same view which we have done.

30. Then the Supreme Court rendered decision in *Nathulal Vs. Phoolchand*, . Under S. 70 (4) of the Madhya Bharat Land Revenue and Tenancy Act of 1950, land could not be sold to an alienee not being an agriculturist without the sanction of the State Government. In that case transfer was made without such sanction but possession was delivered. Since the purchase had failed to pay on the due date of balance of the price, the vendor rescinded the contract and commenced an action for a decree for possession of land and the factory standing thereon with mesne profits. The transferee invoked the provisions of S. 53-A to his aid. There was no condition in the contract that the sanction required under S. 70 (4) would be obtained. The Supreme Court held that a condition to secure such a sanction after paying the appropriate fee must be implied and that it was well settled that where by a statute property was not transferable without the permission of the authority, an agreement to transfer the property must be deemed subject to implied condition that the transferor will obtain the sanction of the authority concerned. Then the learned Judges of the Supreme Court held that all the conditions necessary for making out the defence of part performance were fulfilled in the case. Once these essential requirements of S. 53-A of the T. P. Act were satisfied, there was no bar to the defence of part performance and the transferee could protect his possession under that provision. Sect 70 of the Madhya Bharat Land Revenue and Tenancy Act had a provision in sub-sect, (8) that no sale should be deemed to be valid unless the sale deed effecting such a sale had been registered in accordance with law of registration in force for the time being. Since there was no sale in that case and the purchaser was not relying upon any sale, there was no impediment in the way of safeguarding his possession under S. 53-A. This decision, in our opinion, does not in any way detract from what we have expressed above. Under sub-sec. (4) of S.70 of the

Madhya Bharat Act, land is not transferable without the permission of the appropriate authority to a non-agriculturist. The Supreme Court held the even if the contract did not contain the securing of such permission as one of the conditions, it implied in any contract of sale. This is what we also have held and that was the view, expressed in Syed Jalal and Others Vs. Tarrgopal Ram Reddy and Others, . Therefore, when all the requirements of S. 53-A were satisfied certainly the transferee was entitled to protect his possession under that provision of law.

31. We must also notice in this connection certain vital differences between the Madhya Bharat Law and the relevant laws that obtained in the State of Andhra Pradesh. Sec. 47 of the Hyderabad Tenancy Act unlike S. 70 (4) of the Madhya Bharat Act clearly declared that no permanent alienation or other transfer of an agricultural land shall be valid unless it has been made with the previous sanction of the Tashildar. The corresponding provision did not exist in the Madhya Bharat Law. Though the alienee could seek specific performance of a contract calling upon the vendor to obtain the sanction of the Tashildar and then execute a sale deed, once the transaction was finalised and completed without obtaining the sanction of the Tashildar, the alienation or transfer become invalid. Further, there is no provision in the Madhya Bharat Law which corresponds to S. 50-B of the Hyderabad Tenancy Act, under which validation of transfers could be effected even later, once again emphasising that validation of the transfer was essential. As the learned Judges pointed out in the decision of the Supreme Court,, the condition to secure the permission of the Appropriate authority for the alienation was implied and it could be secured at anytime in future. Since there was possibility in that case for securing the permission and thus complying with S. 70 (4) of the Madhya Bharat Law, S. 53-A was presumably held to safeguard the possession of the transferee. But in the instant cases that possibility of securing the sanction came to an end on 31st of March, 1972. Afterwards there was no possibility of validating the sale transactions.

32. What is more, the lands which are purported to have been transferred in these three cases, are situate in Schedule Areas, the transfer of which by tribals to non-tribals was prohibited on and from 1-12-1963 in the Telegana Region. This circumstance also did not exist in the Supreme Court's case. Therefore, while following the principle laid down by the Supreme Court in Nathulal Vs. Phoolchand, , we find nothing in that decision which goes contrary to the view we have expressed.

33. Then there is a decision of Madhava Reddy, J, D/- 21-9-1972 in S. A. No. 450 of 1970 (Andh Pra). In that case a question arose whether a contract of sale dated 30th June, 1956 could be deemed to be authorised at least from 18th March, 1969 i.e., the date of the Third Amendment to the Hyderabad Tenancy Act and whether the possession of the 1st defendant could be protected under the provisions of S. 53-A of the Transfer of Property Act. The learned Judge referred to Syed Jalal and Others Vs. Tarrgopal Ram Reddy and Others, , his own decision

in S. A. No.520 of 1968 and that in the Letters Patent Appeal 139 of 1970; (ILR 1974 AP 119) and concluded that the view he had taken in S. A. 520 of 1968 had found favour with the Division Bench. These cases we have already considered and expressed our opinions. Then the learned Judge referred to Nathulal Vs. Phoolchand, , and also that of a Full Bench of this Court in K. Parvathamma Vs. The Commissioner of Excise (Board of Revenue), Govt. of Andhra Pradesh, Hyderabad and Others, ., which dealt with a case of revenue sale and held that the defendants were entitled to invoke the aid of S. 53-A of the T.P. Act. The decision of Kondaiah , J. in the Commercial & Industrial Finance Ltd, v. Smt. Jeelani Begum (1971) 2 APLJ 450 was also noted by the learned Judge and pointed out that the decision therein would not help the case of the appellants therein. To the extent that this decision is contrary to the view we have stated above, we express our respectful disagreement from our learned brother.

34. Then there are two decisions of the Mysore High Court in Eramma v. Parvatamma AIR 1972 Mys 121 and Mohd. Tahair v. S. K. Ali AIR 1973 Mys 307. The former was of a single Judge's and the latter was that of a Division Bench following and approving the Single Judge's view. The single Judge, in the former case followed the decision of the Supreme Court in Nathulal Vs. Phoolchand, . Eramma v. Parvathamma AIR 1972 Mys 121, is a case which directly arose under S. 47 of the Hyderabad Tenancy Act. In that case also there was no sanction obtained from Tashildar as required under that section. The learned Judge following the Supreme Court's decision Nathulal's case held that the fact that there was no express condition in the agreement of sale that the vendor would undertake to obtain the sanction of the collector for the transaction makes no difference to the application of the principles of Sec. 53-A, because such an undertaking on the part of the vendor must be taken as an implied condition of the contract of sale. As held by us and also by a Division Bench of this Court in Syed Jalal and Others Vs. Tarrgopal Ram Reddy and Others, , a contract of this nature could be specifically performed calling upon the vendor to execute a sale deed after obtaining the necessary sanction under S.47. By the time the decision was rendered in the Second Appeal by the learned Single Judge on the 9th March, 1971, there was time for the parties to obtain sanction under that section. It does not appear from the decision that, as was done in Andhra Pradesh, S. 47 was deleted and S. 50-B was enacted in the State of Karnataka. that makes a vital difference. Quite apart from that, it is patent from the decision that the transferee could support his possession under S. 53-A of T.P. Act and he could call upon the transferor to give him specific performance of the contract after obtaining the necessary sanction under S. 47.

35. The Bench decision in Mohd. Tahir v. S. K. Ali (AIR 1973 Mys 307) (supra) merely followed the single Judge's decision and the same reasoning, which was pointed out in respect of the single Judge's decision, would apply to this decision as well.

36. The Full Bench decision in K. Parvathamma Vs. The Commissioner of Excise

(Board of Revenue), Govt. of Andhra Pradesh, Hyderabad and Others, dealt with a case of revenue sale. The Full Bench held that even for revenue sales sanction under S. 47 before the amendment of 1959 was required before confirmation of such sales. We see nothing in this decision which is different from what we have held. It is noteworthy that in the above decision, the further question of the validity of the transfer and possession as per the Regulation did not arise.

37. In W. P. Nos. 1509 and 1510 of 1973 (AP) the validity of alienation of lands in Scheduled Areas was challenged. Chinnappa Reddy, J. by his order dated 10th June 1975 held that the two writ petitions should fail for the reason that the petitioners did not choose to avail themselves of their right of appeal provided by para 3 (iii) of the Regulation. The learned Judge also upheld the view of the Assistant Agent that since the permission of the Tashildar under S. 47 of the Hyderabad Tenancy Act had not been obtained, their possession could not be held to be lawful. Though the decision of Parthasarthi, J. in *Hafeezunnisa Begum v. Syed Arab* (1969 2 AWR 317), was cited before him, Chinnappa Reddy, J. pointed out that S. 3 of the Regulation prevails over any provision contained in any enactment, rule or law in force. Therefore, he held that neither S. 50-B of the Hyderabad Tenancy Act nor S. 53-A of the T.P. Act can be a valid answer to a proceeding for eviction under the Scheduled Areas Land Transfer Regulation.

38. In W. P. No. 131 of 1975 (Andh Pra) and batch the validity of alienations by not-tribals under agreements of sale before 1-12-1963 for which sale deeds were taken after 1-12-1963 came up for consideration. Our learned brother Ganagadhara Rao, J. by his decision dated 26th Feb., 1976 dismissed the writ petitions holding that S. 3 of the Regulation declared all alienations invalid. The sale deed was executed after the Regulation. Since the sale deed which was executed after 1-12-1963 was bad, the agreement of sale taken before that date would not stand. Even assuming that the agreement of sale was valid on the date it was taken, it would have no effect and S.53-A of the Transfer of Property Act would not apply in view of the non obstante clause contained in S. 3 of the Regulation and its overriding effect, The Learned Judge also referred to the decision of Chinnappa Reddy, J. in the aforesaid case and agreed with that view.

39. *Munju V. P. Raju* (1976) 2 APLJ 103, is a case decided by Kuppuswamy, J. In that case a tribal entered into an agreement with the petitioner on 15-2-1963, where under he agreed to sell a piece of land for a sum of Rs. 1,000/-. The amount was paid on that day itself and possession was taken. Thereafter a regular sale deed was executed on 2-3-1969. The Special Deputy Collector held that the document of 15-2-1963 was not registered and so it was not admissible in evidence. Since the regular sale deed which was registered was subsequent to the Regulation, it was invalid and the petitioner was liable to be ejected. On the facts of the case, the learned Judge held that there was no express finding to the effect that there was an agreement on sale on 15-2-1963. In the opinion of the learned Judge this lack of finding amounted to saying in effect that the Special Deputy Collector was not prepared to hold that the agreement of sale was true.

It was also pointed out that the petitioner was not in possession of the land. Therefore, the learned Judge concluded that there was no agreement before the Regulation was applied to the Telengana Area and also there was no possession delivered. Consequently, the learned Judge held that on the facts of the case the writ petition should fail.

40. At the same time, the learned Judge was not inclined to agree with the views expressed by Chinnappa Reddy, J. and Gangadhara Rao, J. in the cases referred to above. Relying on the Supreme Court's decision in Nathulal Vs. Phoolchand, the two Mysore decisions and the decisions of Madhava Reddy, J. in S.A.No. 450 of 1970, D/- 21-9-1972 and S. A. No. 520 of 1968, D/-20-7-1970; (ILR (1972) AP 1313) , the conclusion in which was upheld by the Division Bench in L. P. A. No. 139 of 1970: (ILR (1974) AP 119), Kuppuswamy, J. held that after the deletion of S. 47 and introduction of S. 50-B the possession was unlawful and the doctrine of part performance could be relied on. The learned Judge opined that if there was a transfer even prior to the coming into force of the Regulation, the Regulation will not have any effect on such transfer and S. 3 being one of the provisions of the Regulation will equally have no application. The definition in S. 2 (g) in the Regulation of the expression "transfer" which includes a contract was then noticed and then the learned Judge observed that a contract of sale would amount to a sale. We have already considered at length all the decisions referred by our learned brother Kuppuswamy, J. in Munja's case (1976 2 APLJ 103), and for those reasons, we cannot agree with the legal propositions which the learned Judge laid down in his decision.

41. Before we conclude, we must take note two decisions cite by the learned Counsel for the petitioners viz., Nanasaheb Gujaba Bankar Vs. Appa Ganu Bankar and Others, and Mohinuddin v. Gulam Ghouse ILR (1962) Bom 641. These decisions were cited in support of the contention that even if the transfer had not been completed in the manner prescribed, still the transferee would be entitled to the protection of S. 53-A of the T. P. Act , But there is nothing in these two decisions which is contrary to what we have held. In the present cases the delivery of possession itself was illegal and unlawful since it was contrary to law. Therefore the ratio of the two Bombay cases does not apply to the cases before us.

42. The foregoing discussion shows that there was no indefeasible title or right created in the petitioners before 1-12-1963 on which date the Regulation came to be applied to the Telengana Region. After 1-12-1963 the overriding provision of S. 3 of the Regulation have come into force. Sec. 3 of the Regulation had on and from 1-12-1963, overriding effect despite any other enactment, rule or law in force in agency tracks in respect of transfer of immovable property situate in scheduled areas by a tribal in favour of non-tribal. As we have held, these provisions had no retrospective effect. But then there was no indefeasible right in the petitioners by 1-12-1963. What all they had by that date was a contract of sale and unauthorised and illegal possession of the land. By virtue of S. 3 of the

Regulation, they and the subsequent sale deeds, which the petitioners obtained , were null and void. The result is that the decisions of the Special Deputy Collector, as upheld by the appellate authority, which is sought to be quashed, is in accordance with law.

43. Consequently, the writ petitions are untenable and are accordingly dismissed.

44. Now W. A. 355/77 remains. The Writ petition No. 21115/77 against which this appeal arises was dismissed in limine by our learned brother Raghuvir, J. The Special Deputy Collector held that the alienation in favour of the appellant was invalid in view of the provisions of the Regulation and an appeal was preferred to the appellate authority, Pending the appeal stay of eviction was sought. Since that was refused the writ petition was filed. Raguhvir, J, held that the appellant could have carried the matter in revision before the Government and since there was an alternative remedy, the writ petition could not be entertained. We, however, find that it is not necessary in this case to go into the controversy whether the revision under S. 6 is an alternative remedy which stands in the way of this Court entertaining a writ petition. As we have pointed out, the impugned order is one refusing to grant stay of eviction pending the appeal before the appellate authority. We direct the appellate authority to dispose of the appeal as expeditiously as possible and in the meanwhile, that is to say, until the appellate authority disposes of the appeal, we grant stay of the eviction of the appellant from the lands in question.

45. With this direction the writ appeal is dismissed. Having regard to the circumstances of the case, we direct the parties to bear their own costs in the writ petitions as well as in the writ appeal, Advocate's fees Rs. 150/- in each case.

46. Writ petitions and writ appeal dismissed.