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**(2006) 01 AP CK 0069**  
**In the Andhra Pradesh High Court**  
**Case No : CRP No. 340 of 2004**

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| Parameswara Veerraju Reddi | Vs | APPELLANT  |
| State of A.P. and Others   |    | RESPONDENT |

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**Date of Decision :** 28-01-2006

**Acts Referred:**

Andhra Pradesh Civil Courts Act, 1972 — Section 1, 1(2), 1(3)  
Constitution of India, 1950 — Article 227

**Citation :** (2006) 4 ALD 558

**Hon'ble Judges :** C.V. Ramulu, J

**Bench :** Single Bench

**Advocate :** M.S. Ramchandra Rao, for the Appellant; Government Pleader for Arbitration Respondent Nos. 1 to 3 and K. Balagopal, for the Respondent

**Final Decision :** Dismissed

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## Judgement

C.V. Ramulu, J.—This civil revision petition is filed under Article 227 of the Constitution of India being aggrieved by an order dated 6-1-2004 made in O.S.No. 24 of 1999 on the file of the learned Principal District Judge, East Godavari at Rajahmundry.

2. The facts are not in much dispute. The petitioner-plaintiff is a non-tribal. He laid the above suit seeking to declare the action of the respondent-defendants in putting seals to the plaint schedule property on 1-6-1999 as illegal, invalid and ultra vires of their powers and for a consequential mandatory injunction to the respondent-defendants to remove the seals put by them and also to award an amount of Rs. 50,000/- towards damages. While so, the 5th defendant, who is holding the office of the 3rd defendant (3rd respondent) filed I.A.No. 562 of 2000 to decide the issue "whether the civil Court's jurisdiction is barred as the property is situated in a scheduled area and by virtue of G.O. Ms. No. 1573, dated 30-10-1972 the provisions of the Andhra Pradesh Civil Courts Act, 1972 (for short "the Act") have not been extended to the scheduled areas ?" as a preliminary issue.

3. After elaborate consideration of the matter, the Court below held that in view of Section 1(3) of the Act read with G.O. Ms. No. 1573, dated 30-10-1972, the civil Courts are not conferred with jurisdiction in respect of the scheduled areas and as such, the suit, in respect of which the dispute relates to Agency Area and the cause of action also arose in the same area, cannot be entertained by the Civil Court; therefore, returned the plaint for being presented before the proper Court. Aggrieved by the same, the present revision is filed.

4. Sri M.S. Ramchandra Rao, learned Counsel for the petitioner-plaintiff, submitted that in view of the law laid down by a Division Bench of this Court in *Ashifaquddin and Others Vs. Mohd. Azizuddin and Others*, : the impugned order is illegal and is liable to be set aside. He further submitted that even otherwise, the notification issued in G.O. Ms. No. 1573, Home (Courts-A) Department, dated 30-10-1972 is ultra vires the provisions of Section 1(2) read with Section 1(3) of the Act insofar as granting exemption of application of the provisions of the Act to the scheduled areas is concerned. He also submitted that the judgment rendered in Second Appeal No. 420 of 1988 cannot be looked into, since the same was rendered by a learned Single Judge of this Court. The learned Single Judge could not have held that the judgment of the Division Bench reported in *Ashifaquddin's* case (supra) is per incuriam for the reason that the notification in G.O. Ms. No. 1573, dated 30-10-1972 was not brought to the notice of the Division Bench in the said case.

5. Per contra, Sri K. Balagopal, learned Counsel for the 5th respondent, contended that the A.P. Civil Courts Act is a creature of the legislature. Unless the statute itself permits, no civil Court can entertain the matter of this nature. The Act is not extended to the scheduled areas of the State; therefore, whether the parties are tribals or non-tribals has no relevance. The relevant fact is the location of the property and the cause of action that arose in the matter. In fact, there is a presumption that the entire land situated in the scheduled areas is held by the tribals. Therefore, to prevent the exploitation of tribals by filing the suits, by one non-tribal against the other non-tribal in collusion with each other to deprive the tribal etc., the Act has not been extended to the scheduled areas. As such, the lower Court has not committed any error calling for interference of this Court under Article 227 of the Constitution of India and the civil revision petition is liable to be dismissed.

6. I have given my earnest consideration to the respective submissions made by the learned Counsel on either side and perused the impugned order and also other material made available on record.

7. At the outset, I am of the opinion that the notification issued under G.O. Ms. No. 1573, dated 30-10-1972 has not conferred with any jurisdiction on the Civil Court to deal with the suit in question and the impugned order does not call for interference of this Court under Article 227 of the Constitution.

8. It is the contention of the learned Counsel for the petitioner that the judgment

reported in Ashifaquddin"& case (supra) could not have been declared as per incuriam by the learned Single Judge in Second Appeal No. 420 of 1988. Learned Counsel further stated that the judgment in Ashifaquddin "s case (supra), being delivered by a Division Bench is binding on the learned Single Judge, unless it is declared to be not good law by the Supreme Court or by a Full Bench of this Court. Judicial discipline requires that the said decision should be followed by the learned Single Judge. If the correctness of the said judgment is doubted, the matter could have been referred to a Division Bench. As the matter affects the fundamental rights of a citizen for redressal in a Civil Court, it is appropriate that the law on the issue be settled by another Division Bench or a Full Bench. Therefore, the judgment of the learned Single Judge in Second Appeal No. 420 of 1988 holding that the judgment of the Division Bench in Ashifaquddin"s case (supra) is per incuriam is illegal. In this regard, the learned Counsel relied upon the judgment reported in State of Bihar Vs. Kalika Kuer @ Kalika Singh and Others, wherein it was held as under.

10. Looking at the matter, in view of what has been held to mean by per incuriam, we find that such element of rendering a decision in ignorance of any provision of the statute or the judicial authority of binding nature, is not the reason indicated by the Full Bench in the impugned judgment, while saying that decision in the case of Ramkrit Singh (supra) was rendered per incuriam. On the other hand, it was observed that in the case of Ramkrit Singh (supra) the Court did not consider the question as to whether the consolidation authorities are Courts of limited jurisdiction or not. In connection with this observation, we would like to say that an earlier decision may seem to be incorrect to a Bench of a co-ordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the Court or more aspects should have been gone into by the Court deciding the matter earlier but it would not be a reason to say that the decision was rendered per incuriam and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of co-ordinate jurisdiction. Easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be resolved only in two ways - either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits....

(emphasissupplied).

He also relied upon the judgment reported in Dr. Vijay Laxmi Sadho Vs. Jagdish, : in which it has been held as follows:

29. As the learned Single Judge was not in agreement with the view expressed in Devilal"s case, it would have been proper, to maintain judicial discipline, to refer the matter to a Larger Bench rather than to take a different view. We note it with regret and distress that the said course was not followed. It is well settled that if a bench of co-ordinate jurisdiction disagrees with another Bench of co-ordinate

jurisdiction whether on the basis of "different arguments" or otherwise, on a question of law, it is appropriate that the matter be referred to a Larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate creating confusion. It is not proper to sacrifice certainty of law. Judicial decorum, no less than legal propriety forms the basis of judicial procedure and it must be respected at all costs.

9. Learned Counsel further submitted that though a provision of law i.e., the notification in G.O. Ms. No. 1573, dated 30-10-1972 was not brought to the notice of the Division Bench, it must not be deemed that a possible aspect of the matter was not considered or was not raised before the Division Bench or more aspects should have been gone into by the Division Bench in deciding the matter earlier, but it would not be a reason to say that the decision was rendered per incuriam and liable to be ignored.

10. The said decision in Kalika Kuer's case (supra) has no relevance to the facts of this case. There, the Apex Court held that on the ground that a possible aspect of the matter was not considered or not raised before the Court or more aspects should have been gone into by the Court deciding the matter earlier, but it would not be a reason to say that the decision was rendered per incuriam and liable to be ignored. In this case, it is not just a ground that a possible aspect of the matter was not considered or not raised before the Court or more aspects should have been gone into by the Court while deciding Ashifaquddin's case (supra). Further, in Vijay Laxmi Sadho's case (supra), the Apex Court held that it is well settled that if a Bench of co-ordinate jurisdiction disagrees with another Bench of co-ordinate jurisdiction, where on the basis of "different arguments" or otherwise, on a question of law, it is appropriate that the matter be referred to a larger Bench for resolving the issue. This is not one such case. This is a case where the legal provision, rather provision of law i.e., the notification in G.O. Ms. No. 1573, dated 30-10-1972, itself was not brought to the notice of the Division Bench. There cannot be any better example than this as to invoke the doctrine of per incuriam.

11. The doctrine of per incuriam operates as an exception to the law of precedent. In practice, per incuriam appears to mean per ignoratum. The Courts have developed this principle in relaxation of the rule of stare decisis. The "quotable in law" is avoided and ignored, if it is rendered in ignoratum of a statute or binding authority. To attract the doctrine of per incuriam it should be a glaring case, an obtrusive omission i.e., where by obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached. In other words, rule of "per incuriam" can be applied where a Court omits to consider a binding precedent of the same Court or the Superior Court rendered on the same issue or omits to consider any statute while deciding that issue. This is one such case. The notification in G.O. Ms. No. 1573, dated 30-10-1972 was not brought to the notice of the Division Bench while rendering the decision in Ashifaquddin's case

(supra). Under those circumstances, the learned Single Judge held that the said decision in Ashifaquddin's case (supra) is per incuriam, but not on the ground that some more aspects should have been gone into. This is not a case where the binding authority has been ignored by the learned Single Judge stating that some more aspects could have been considered or ignored while holding that the judgment in Ashifaquddin's case (supra) is per incuriam. Therefore, there cannot be any dispute as to the ratio laid down by the Apex Court in the said two decisions. However, they have no relevance to the facts of this case. As such, the argument of the learned Counsel for the petitioner that the learned Single Judge could not have held that the judgment in Ashifaquddin's case (supra) is per incuriam cannot be countenanced.

12. Insofar as the other contention that the notification issued by the Government in G.O. Ms. No. 1573, dated 30-10-1972 is ultra vires the provisions of Section 1(2) read with Section 1(3) of the Act is concerned, it may be necessary to notice Section 1 of the Act, which reads as under:

1. Short title, extent and commencement:

(1) This Act may be called the Andhra Pradesh Civil Courts Act, 1972.

(2) It extends to the whole of the State of Andhra Pradesh.

(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.

13. According to the learned Counsel for the petitioner, in view of the language employed in Section 1(2) read with Section 1(3) of the Act, it must be deemed that the Act is extended to the whole of the State of Andhra Pradesh and it shall come into force in such area and on such date as the Government may by notification indicate. But, Section 1(3) of the Act does not contemplate exemption of the Act to a particular area or district etc. The Act may be extended and made applicable to a particular area by naming the place or district, but no power is conferred under the Act for exempting certain areas from the applicability of the Act. Exempting certain areas, such as, scheduled areas, from the applicability of the Act is contrary to Section 1(2) of the Act. There is no question of exempting a particular area from the application of the Act when it is extended to the whole of State of Andhra Pradesh. The purport of Section 1(3) of the Act is only to extend it by means of different notifications to different areas or places or districts etc. But, there is no exemption from application of the Act to a particular area i.e., scheduled areas. According to the learned Counsel, it merely authorizes for bringing into operation of the Act to different areas on different dates. Section 1(3) of the Act cannot be said to empower the State Government to exempt any part of the State of Andhra Pradesh even if it is a scheduled area from the operation of the Act. The said notification in G.O. Ms. No. 1573, dated 30-10-1972, therefore, is ultra vires the provisions of the Act and is null and void.

14. I am afraid, I cannot agree with the said submission, though it is very attractive. Section 1(3) of the Act, as noticed above, does not indicate exemption of application of the Act to a particular area. The notification in G.O. Ms. No. 1573, dated 30-10-1972 indicates that the Act is extended to the entire State of Andhra Pradesh except in the scheduled areas. In other words, it is extended only to the areas other than the scheduled areas of the State as on 30-10-1972. Simply because the language imported in the said notification says that "except in the scheduled areas of the State" does not mean that the scheduled areas of the State are exempted from the operation of the Act once for all. The notification is perfectly within the power vested in the Government u/s 1(3) of the Act. At the first instance, it has been brought into force to the areas other than the scheduled areas of the State. Therefore, it cannot be said issuance of the notification in G.O. Ms. No. 1573, dated 30-10-1972 is ultra vires the provisions of Section 1(2) read with Section 1(3) of the Act. The fundamental principle of Law is that a public authority cannot act outside its power, i.e., ultra vires. An Act, which is, for any reason, "in excess of power" is ultra vires. It is true that the validity of the delegated legislation can be challenged on the ground that it is ultra vires the parent Act or enabling statute or any general law. Further, it is an accepted principle that delegated authority must be exercised strictly within the authority. The delegated legislation or subordinate legislation can be held valid only if it conforms exactly to the powers granted. The rules made under the statute must be intra vires the parent law under which the powers have been delegated. If the rule making power is conferred and the Rules made are in excess of that power, the rule would be void even if the Act provided that they shall have effect as if enacted in the Act. The validity of the rule is always open to challenge on that ground that it is unauthorized. The validity of the delegated legislation is a question of vires, i.e., whether or not the power has been exceeded or otherwise wrongfully exercised or is inconsistent with the parent Act. As noted above, in the instant case, there is no dispute as to the enabling power of delegated legislation. Further, it cannot be said that by using notification, the delegated authority has exceeded its authority or wrongly exercised the authority vested in it to show that the said notification is inconsistent or ultra vires the parent Act.

15. The learned Counsel for the petitioner also stated that the Agency Rules are intended to apply only where tribals are involved and not where the parties are non-tribals. Therefore, there is no bar for the learned District Judge to entertain the suit as it is in between the non-tribals, even if the subject-matter is within the tribal area forming part of the District which he presides. The defendants in the suit are the State of Andhra Pradesh, represented by its District Collector, East Godavari, Revenue Divisional Officer, Rampachodavaram and Mandal Revenue Officer and there is no dispute that they are non-tribals. This is very strange, It is not that whether somebody is a tribal or a non-tribal or whether the dispute is between a tribal and a non-tribal or inter se the non-tribals. The sine qua non being the location of the subject-matter of the suit and the jurisdiction

of the Civil Court to deal with such matters. The notification issued by the Government is not in conflict with the parent Act i.e., A.P. Civil Courts Act, 1972. Therefore, it must give way to the substantive statute and so be read in that context. Since, as held above, I am of the opinion that the Judgment reported in Ashifaquddin's case (supra) is per incuriam and the notification issued in G.O. Ms. No. 1573, dated 30-10-1972 is not ultra vires of Sections 1(2) and 1(3) of the Act, the other judgments relied upon by the learned Counsel for the petitioner do not call for any consideration. The order impugned does not call for interference of this Court under Article 227 of the Constitution of India.

16. Accordingly, the civil revision petition is dismissed. No order as to costs.

17. However, it is always open for the Agent to the Government, to decide the question, whether it can adjudicate the matter, since the Collector is a party to the suit, or the suit could have been tried by ignoring or excluding the Collector as a party to the suit. After such consideration, if it is necessary, the Agent to the Government, may transfer the suit to any other Agency Court after following due procedure.