
(2004) 06 BOM CK 0047

In the Bombay High Court

Case No : Writ Petition No. 2989 of 1991

Sakharam Bhoju Rathod

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 29-06-2004

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 49A
Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 — Section 3, 3(3),
3(4), 4

Citation : (2005) 1 ALLMR 183 : (2005) 1 BomCR 386 : (2004) 3 MhLj 1018

Hon'ble Judges : B.R. Gavai, J

Bench : Single Bench

Advocate : A.A. Naik, for the Appellant; N.S. Jog, A.G.P. for respondent Nos. 1 and 3 and S.R. Deshpande, for the Respondent

Final Decision : Dismissed

Judgement

B.R. Gavai, J.—The petitioner by way of present petition challenges the order passed by the learned Maharashtra Revenue Tribunal dated 24-10-1991 in Revenue Appeal No. 67/B-109/91 thereby dismissing the appeal of the petitioner and upholding the order passed by the Tahsildar, Kelapur vide which the land admeasuring 4 acres and 29 gunthas was directed to be restored to the respondent No. 2 herein.

2. The short background giving rise to the present petition is as under :--

That the respondent No. 2 herein made an application dated 21-1-1988 to respondent No. 3 Tahsildar claiming therein that the petitioner was in possession of survey No. 35/A admeasuring 4 acres and 29 gunthas owned by the father of the respondent No. 2. The said application was made under the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (hereinafter referred to as "the Act" for short). The said application was replied by the petitioner on the ground that since 1964 the father of the petitioner was his tenant and that under the provisions of the Bombay Tenancy and Agricultural

Lands (Vidarbha Region) Act, 1958 (hereinafter referred to as "the Tenancy Act") the ownership was conferred upon the father of the petitioner. Purchase price was accordingly deposited. The purchase certificate was issued to the petitioner on 7-8-1986. Vide order dated 19-4-1989 the respondent No. 3 held that the respondent No. 2 was entitled to restoration of the land in question. Being aggrieved by the said order, the petitioner went in appeal before the Maharashtra Revenue Tribunal. However, the Maharashtra Revenue Tribunal also dismissed the appeal of the petitioner. Being aggrieved thereby, the petitioner approaches this Court by way of the present petition.

3. Heard Shri A.A. Naik, the learned Counsel for the petitioner, Smt. N.S. Jog, learned Assistant Government Pleader for respondent Nos. 1 and 3 and Shri S.R. Deshpande, learned Counsel for respondent Nos. 2 and 4.

4. Shri Naik, learned Counsel for petitioner, has raised four grounds in support of the claim of the petitioner. Firstly, Shri Naik submits that the transfer in question was under the provisions of the Tenancy Act and that since the said transfer was a statutory transfer, it is not covered by Section 2(i) of the said Act and as such, the impugned orders are not in accordance with law. In support of this submission, he relies on the judgment of this Court in the case Puna Arjun Mali and Anr. v. Mana Maka Bhil and Ors. reported in 1992 M.L.J. 46 wherein this Court has held that the statutory transfer is not covered by Section 2(i) of the said Act.

5. Secondly, he submits that the application itself was barred by limitation and, therefore, the lower authorities ought not to have entertained the said application. According to him since the application was made in the year 1988 and since the date of commencement of the Act is 1-11-1975 and that the limitation prescribed at the relevant time was only three years, the application was beyond limitation by almost 10 years. He submits that the amendment to the said Act which was made in the year 1990 which enhanced the limitation to 30 years will not save the said application. According to him, the rights of the parties will have to be determined on the basis of the law as it existed on the date of the application. In support of this submission, he relies on the judgment of Privy Council in the case of AIR 1942 54 (Privy Council) and the judgment of the Supreme Court in the case of New India Insurance Co. Ltd. Vs. Smt. Shanti Misra, Adult, .

6. Thirdly, he submits that the said Act is applicable only for the transfers which are effected between 1-4-1957 and 6-7-1974. According to him, the purchase certificate was issued on 7-8-1986. He thus submits that the date of the transfer under Tenancy Act would be 7-8-1986 and as such, the said transfer would not be covered by the provisions of the said Act since it was not between 1-4-1957 and 6-7-1974.

7. The fourth submission of Shri Naik is that it is mandatory to take an undertaking from the tribal that he would personally cultivate the land in view of

provisions of Section 3(3) of the said Act. He submits that the Tahsildar had issued the order without obtaining the undertaking and that this ground was specifically raised before the learned Appellate Tribunal. The learned Tribunal instead of allowing the appeal has only remanded the matter to Tahsildar for obtaining the undertaking. According to him, this has vitiated the entire proceedings.

8. Shri S.R. Deshpande, learned Counsel for respondent No. 2, in reply, has submitted as under :--

With respect to the first point, Shri Deshpande submits that Section 4 of the said Act covers the transfers which are made in pursuance of the provisions of relevant Tenancy law. Therefore, the transfer in question was covered under the provisions of the Act. Insofar as the judgment of this Court in the case of Puna Arjun Mali and Anr. v. Mana Maka Bhil and Ors. reported in 7992 M.L.J. 46 is concerned, Shri Deshpande submits that the lease in question in the said case was created in 1939, i.e. much prior to 1-4-1957, i.e. the date from which the transfers are covered under the said Act. He, therefore, submits that on facts that judgment is not applicable to the present case since in the present case the transfer is between 1-4-1957 and 6-7-1974.

9. Insofar as the second submission regarding limitation is concerned, Shri Deshpande submits that the said Act is a beneficial legislation. By way of amendment in the year 1990, the Legislature has amended Sections 3 and 4 thereby increasing the limitation to 30 years from 3 years. He submits that the said amendment would take effect from the date of the commencement of the Act. He submits that in view of the amended provision, the respondent No. 2 can even file an application today. He submits that if it is held that the application of the respondent No. 2 was time-barred, then that would lead to an anomalous situation. Shri Deshpande relies on the judgment of the Apex Court in the case Dhannalal Vs. D.P. Vijayvargiya and Others, and in the case of The New India Assurance Co. Ltd. Vs. C. Padma and Another, .

10. Insofar as the third ground is concerned, Shri S.R. Deshpande submits that so far as the contention of the petitioner that the date on which the purchase certificate is issued will be the relevant date for the transfer is concerned, the said contention is devoid of substance. He submits that in view of Section 49-A of the Tenancy Act, the relevant date on which the ownership vests would be 1-4-1963. In support of this submission, he relies on the judgment of Apex Court in the case of Madhaorao Rajeshwar Deshpande v. Shankar Singh Madhao Singh and Ors. reported in 1971 M.L.J. 4.

11. Insofar as the fourth ground is concerned, Shri Deshpande submits that obtaining of an undertaking is a curable defect and non-compliance with the same does not vitiate the proceedings.

12. Smt. N.S. Jog, learned Assistant Government Pleader, relying on the judgment of the Apex Court in the case of Dahiben and others Vs. Vasanji

Kevalbhai (dead) and others, submits that since the said Act is a beneficial legislation, the amendment to the provisions of Sections 3 and 4 of the said Act which increase the limitation to 30 years from 3 years should be held to be retrospective in nature and as such the application was within limitation.

13. Insofar as obtaining the undertaking is concerned, she submits that the undertaking could be obtained at the stage of giving possession. She further submits that the impugned order is referable to Section 4 of the said Act and, therefore, it is not necessary to obtain an undertaking. According to her, only when a land is sought to be restored under the provisions of Section 3 of the said Act, it is necessary to obtain an undertaking. In any event, she submits that in view of the provisions of Section 5-A of the said Act, if the land cannot be restored or if the tribal does not wish to cultivate the land, then the land vests in the State Government and as such, the petitioners will have no right to continue in possession.

14. Shri Naik, in rejoinder, submits that the amendment to a statute which takes away the rights which have accrued in favour of a party cannot be read to be retrospective in nature and will have to be construed as having a prospective effect. According to Shri Naik, the judgment of the Apex Court in the case of New India Assurance Co. Ltd., cited supra, does not consider the judgment of the Constitution Bench in the case of Shyam Sunder and Another Vs. Ram Kumar and Another, . According to him, since the amendment to Sections 3 and 4 effected in the year 1990 creates new rights and liabilities, it will have to be read as prospective in nature and cannot be given retrospective effect so as to validate the application which was already time-barred in view of the law which existed on the date of filing of the application.

15. To deal with the rival contentions, it will be necessary to refer to certain provisions of the said Act and the Tenancy Act. The provisions of the said Act which are relevant for determination of the present petition are as under :--

"Section 3 (1) Where due to transfer --

(a) the land of a Tribal-transferor is held by a non-Tribal-transferee, or

(b) the land acquired in exchange by a Tribal-transferor is less in value than the value of the land given in exchange,

and the land so transferred is in possession of the non-Tribal-transferee, and has not been put to any non-agricultural use on or before the 6th day of July, 1974, then, notwithstanding anything contained in any other law for the time being in force, or any judgment, decree or order of any Court, Tribunal or authority, the Collector either suo motu at any time, or on the application of a Tribal transferor made within thirty years from the commencement of this Act shall, after making such inquiry as he thinks fit, direct that --

(i) the lands of the tribal-transferor and non-tribal transferee so exchanged shall be restored to each other and the tribal-transferor or as the case may be, the

non-tribal-transferee shall pay the difference in value of improvements as determined under clause (a) of Sub-section (4), or

(ii) the land transferred otherwise than by exchange be taken from the possession of the non-tribal transferee and restored to the tribal-transferor free from all encumbrances and the tribal-transferor shall pay such transferee and other persons claiming encumbrances the amount determined under clause (b) of Sub-section (4):

Provided that, where land is transferred by tribal-transferor in favour of a non-tribal transferee before the 6th day of July, 1974, after such transferee was rendered landless by reason of acquisition of his land for a public purpose, then only half the land so transferred shall be restored to the tribal-transferor.

Explanation -- Where the lands of a tribal and non-tribal are purported to have been transferred to each other, otherwise than by exchange, but the date on which the instrument for such transfers are registered is the same or, where such instruments are registered on different dates, but the interval between the dates of registration is 30 days or less, then, notwithstanding anything contained in such instruments, for the purposes of this section, such transfers shall be deemed to be by way of exchange"

(2)

(3) The tribal-transferor shall, notwithstanding anything contained in any law for the time being in force in the State, be entitled to restoration of land under this section only if he undertakes to cultivate the land personally and to pay such amount to the non-Tribal-transferee as the Collector may, under the provisions of Sub-section (4), determine :

Provided that, in the case of a minor, the undertaking may be given by his guardian, and in the case of any other person, under disability by his authorised agent.

"Section 4 : Where any land of a Tribal is, at any time, on or after the 1st day of April, 1957 and before the 6th day of July, 1974, purchased or deemed to have been purchased or acquired under or in accordance with the provisions of the relevant Tenancy law by a non-Tribal transferee or where any acquisition has been regularised on payment of penalty under such law and such land is in possession of a non-Tribal transferee and has not been put to any non-agricultural use on or before the 6th day of July, 1974, then the Collector shall, notwithstanding anything contained in any law for the time being in force, either suo motu at any time or on an application by the Tribal made within thirty years from the commencement of this Act and after making such enquiry as he thinks fit, direct that the land shall, subject to the provisions of Sub-section (4) of Section 3, be restored to the tribal free from all encumbrances and that the amount of purchase price or a proportionate part thereof, if any, paid by such non-Tribal transferee in respect of such land in accordance with the relevant

tenancy law shall be refunded to such non-tribal transferee either in lump or in such annual instalments not exceeding twelve (with simple interest at 4 1/2 per cent per annum) as the Collector may direct. The provisions of clauses (d), (e), (f) and (g) of Sub-section (4) of Section 3 shall, so far as may be, apply in relation to the recovery of the amount from the Tribal and payment thereof to the non-Tribal transferee and the persons claiming encumbrances, if any :

Provided that, where land is purchased or acquired by a non-Tribal transferee before the 6th day of July, 1974, after such transferee was rendered landless by reason of acquisition of his land for a public purpose, then only half the land so purchased or acquired shall be restored to the Tribal-transferor.

"Section 5A(1) Where any land (not being land acquired in exchange), which is liable to be restored to a Tribal-transferor under Sub-section (1) of Section 3 cannot be so restored either on account of the failure of the Tribal transferor to give an undertaking referred to in Sub-section (3) of Section 3 or for any reason whatsoever or where any land referred to in Section 4 cannot be restored to the Tribal by reason of such Tribal expressing, during the enquiry held by the Collector, his unwillingness to refund the purchase price or proportionate part thereof to the non-tribal transferee as required by the said Section 4, or for any other reason, then, the Collector may, subject to Rules, if any, made in that behalf, by order in writing direct that the land shall with effect from the date of the order, be deemed to have been acquired and vest in the State Government free from all encumbrances."

The relevant provision of the Tenancy Act is as under :--

"Section 40A (1) Notwithstanding anything contained in Section 41 or 46 or any custom, usage, decree, contract or grant to the contrary but subject to the provisions of this section on and from the 1st day of April, 1963 the ownership of all land held by a tenant, (being land which is not transferred to the tenant u/s 46 or which is not purchased by him u/s 41 or 50) shall stand transferred to and vest in, such tenant who shall, from the date aforesaid, be deemed to be the full owner of such land if such land is cultivated by him personally and

(i) the landlord has not given notice of the termination of tenancy in accordance with the provisions of Sub-section (1) of Section 38 or Section 39 or Sub-section (2) of Section 39-A; or

(ii) the landlord has given such notice but has not made an application thereafter u/s 36 for possession as required by those sections; or

(iii) the landlord (being a landlord not belonging to any of the categories specified in Sub-section (2) of Section 38) has not terminated the tenancy on any of the grounds specified in Section 19; or has so terminated the tenancy but has not applied to the Tahsildar on or before the 31st day of March, 1963 u/s 36 for possession of the land;

Provided that where the landlord has made such application for possession, then

the tenant shall, or the date on which the application is finally decided be deemed to be the full owner of the land which he is entitled to retain in possession after such decision."

16. Insofar as the first contention of Shri Naik is concerned, it can be seen that this Court in the case of Puna Mali, cited supra, was considering a lease which was of the year 1939 and as such, it was not a lease covered between the relevant period, i.e. 1-4-1957 and 6-7-1974. In that view of the matter, the question of applicability of the said Act was not an issue for consideration before the said Court. In that view of the matter, I do not find that the said decision can be held to be a ratio laying out that the statutory transfers are not covered by the provisions of Section 4 of the said Act. This Court in the aforesaid judgment has only considered as to what sort of transfers are included in Section 2(i) of the Act. The question regarding the rights and liabilities of the parties u/s 4 was not an issue that arose for consideration before this Court in the said case. Perusal of Section 4 would make it amply clear that the said section provides for restoration of lands of persons belonging to Scheduled Tribes. It further clarifies that where any land of a tribal is at any time on or after 1-4-1957 and before 6-7-1974 purchased or deemed to have been purchased or acquired under or in accordance with the provisions of the relevant Tenancy laws, by a non-tribal transferee and where any acquisition has been regularised on payment of penalty under such law and such land is in possession of the non-tribal transferee and has not been put to any non-agricultural use on or before 6-7-1974, then the Collector either suo motu or on the application of the tribal shall direct the restoration of the said land. It is thus clear that the scheme of Sections 3 and 4 is different; whereas Section 3 covers other modes of transfers, which are referable to Sub-section (i) of Section 2, Section 4 covers only such of the transfers, where the land has been purchased or deemed to have been purchased or acquired under the provisions of relevant tenancy laws. In that view of the matter, the present transfer is squarely covered by provisions of Section 4 of the said Act.

17. Insofar as the contention of Shri Naik regarding the date of purchase certificate being relevant date for transfer is concerned, the same is also without substance. Provisions of Section 49A of the Tenancy Act clearly provide that on and from 1-4-1963, the ownership of all lands held by a tenant shall be transferred to and vest in such tenant and from the aforesaid date, the tenant shall be deemed to be the full owner of such land if such land is cultivated by him personally. It is thus clear that the land had vested in the petitioner on 1-4-1963 and as such, the said vesting was within the period so as to invite the mischief of provisions of Section 4. The Apex Court had an occasion to consider the provisions of Section 49A of the Tenancy Act in the case of Madhaorao Rajeshwar Deshpande, cited supra. In the said judgment, the Apex court has upheld that the transfer of ownership to the tenants is with effect from 1-4-1963 and that is the date on which the ownership of the land vests in the tenant. In this view of the matter, the contention of Shri Naik with regard to the date of issuance of

purchase certificate, i.e. 7-8-1986 being the date of transfer is also without substance.

18. Insofar as the next submission of Shri Naik that obtaining an undertaking was mandatory and non-obtaining of the undertaking has vitiated the entire proceedings is concerned, the same is also without substance. As already pointed out by the learned A.G.P., there is no requirement to obtain an undertaking when the restoration is u/s 4 of the said Act. As already pointed out, the scheme u/s 3 and Section 4 is totally different. The necessity to obtain an undertaking to cultivate the land personally is under Sub-section (3) of Section 3 of the said Act. In my view, therefore, when the restoration is u/s 4 it is not mandatory to obtain an undertaking as required under Sub-section (3) of Section 3 of the said Act. In any event, as pointed out by the learned A.G.P. that if for any reason the land cannot be restored to the tribal, then the Collector may by an order in writing direct that the land shall with effect from the date of the order be deemed to have been acquired and vest in the State Government free from all encumbrances. Thus, the petitioners have no right to claim the possession of the same. This submission of Shri Naik also, therefore, must fail.

19. That takes us to the most important question as to whether the application of the respondent No. 2 is liable to be thrown on the ground that it was filed beyond the period of limitation as available on the date of making the application.

The dates are not in dispute. The Act as it stood originally provided the limitation of three years from the date of commencement of the Act. The date of commencement of the Act is 1-11-1975. The amendment to the Act increasing the limitation from 3 years to 30 years has come into effect from 1-1-1991. It is thus clear that the application which was made by the respondent No. 2 in the year 1988 was clearly barred by law as it existed then which provided for limitation of three years. However, the question would be what is the effect of the amendment to the said Act brought into effect in the year 1991. Whether the application of the respondent No. 2 is liable to be thrown away on the ground of limitation or whether the amendment by Maharashtra Act I of 1991 (hereinafter referred to as "the 1991 Act") saves the application of the respondent No. 2, is the question that will have to be gone into.

20. The Legislature after taking into consideration the difficulty faced by illiterate tribals, that for various reasons they could not have made application within the prescribed period of three years and that the relief which was sought to be provided by the said beneficial legislation was not available to them and with a view to making such relief available, considered it necessary to provide for a period of limitation of 30 years instead of 3 years, during which period such an application of restoration of land to him could be made by the tribal transferor. From the aims and objects of the 1991 Act, it is clear that the Legislature had also intended to make such a right available to the tribals to make such an application even if the limitation had expired earlier. Sections 5 and 6 of the 1991 Act substitute the period of limitation of 3 years by 30 years.

21. Section 7 of the 1991 Act provides that notwithstanding anything contained in any law for the time being in force or any judgment or decree or order of any Court or Tribunal or authority, where the Collector had not initiated suo motu proceedings or tribal transferor had not made any application during the period specified in the principal Act, as they stood prior to amendment made by this Act, for restoration of land under the provisions aforesaid, it shall be competent to the Collector to suo motu initiate any proceedings or for the tribal transferor to make an application under the provisions of the said Code or principal Act as amended by this Act for restoration of land to the tribal transferors."

22. It is thus clear from Section 7 of 1991 Act that the Legislature intended to protect the rights of the tribals and also enabled them to make an application if they had not made any application within the prescribed period of three years provided by the said Act as it stood originally. The intention of the Legislature is thus very clear. It creates a right in a tribal transferor to apply for restoration of land even if he has not applied under the prescribed period of three years under the said Act as it stood then.

23. Shri Naik urged that since the respondent No. 2 had in fact made an application beyond the period of limitation, he will not be entitled to benefit of Section 7 of 1991 Act. It is difficult to accept the said contention raised on behalf of the learned Counsel for the petitioner. If the said contention is accepted, it would lead to an anomalous situation. A plain reading of Sections 3 and 4 would show that by Amendment Act what has been substituted is only 30 years instead of 3 years. Rest of the words used in the said Act remain as they stood earlier. Therefore, a plain reading of the provision would show that a person would be entitled to file an application within a period of 30 years from the commencement of the Act, i.e. 1-11-1975. Had the respondent No. 2 not chosen to file an application in 1988, he would have still been in a position to file an application for restoration of his land even today. If the contention of Shri Naik is to be accepted, it will defeat the entire purpose of beneficial legislation, which is enacted with an intention to provide restoration of land to the tribals.

24. Similar situation arose for consideration before the Apex Court in the case of Dhannalal Vs. D.P. Vijayvargiya and Others, . In the said case, the appellant while going on road, on 4-12-1990 became victim of the accident, thereby receiving severe injuries. He filed a claim petition for compensation on 7-12-1991 with an application for condonation of delay, which was of 4 days. The Tribunal by order dated 18-11-1993 condoned the delay. The said order was challenged before the High Court of Madhya Pradesh at Jabalpur. The High Court set aside the order of the Tribunal condoning the delay, on the ground that in view of Sub-section (3) of Section 166 of the Motor Vehicles Act, 1988 (M. V. Act), the power of condonation by the Tribunal has been withdrawn and the claim ought to have been filed within the prescribed period. The said order came to be challenged before the Apex Court. The Apex Court found that the provisions of Section 110-A as they originally stood provided for an application for

compensation to be made within six months from the occurrence of the accident. However, a power was given to the Claims Tribunal to entertain an application after the expiry of the said period of six months if the Tribunal was satisfied that the applicant was prevented by sufficient cause for making the application in time. The new Act which repealed the earlier Act came into effect from 1-7-1989. Section 166 of the said Act provided that the application was to be filed within a period of six months from the date of the occurrence of the accident. However, a power was given to the Tribunal to entertain the application after the expiry of six months but not later than 12 months. The High Court had held that the power was available with the Tribunal to condone the delay only if the application was filed before the 12 months and that if any application was filed beyond 12 months, it was bound to be rejected. In the Amending Act of 1994 which came into effect from 14-11-1994, there was no limitation for filing the claim before the Tribunal in respect of any accident. Thus, in the aforesaid case also on the date on which the application was filed by the claimant, the application was beyond period of 12 months, i.e., beyond limitation which could not be condoned. However, the Apex Court taking into consideration the fact that the Motor Vehicles Act was a beneficial legislation and that since the requirement of limitation was taken away, the applicant could have filed the claim petition even today, reversed the order of the High Court. The Apex Court observed that the Parliament from time to time has introduced amendments in the old Act as well as in the new Act in order to protect the interest of the victim of the accidents and their heirs if the victim dies. The Apex Court observed thus :--

"In this background, the deletion of Sub-section (3) of Section 166 should be given full effect so that the object of deletion of the said section by Parliament is not defeated. If a victim of the accident or heirs of the deceased victim can prefer claim by compensation although not being preferred either because of the expiry of the period of limitation prescribed how the victim or the heirs of the deceased shall be in a worse position if the question of condonation of delay in filing the claim petition is pending either before the Tribunal, the High Court or the Supreme Court. The present appeal is one such case. The appellant has been pursuing from the Tribunal to this Court. His right to get compensation in connection with the accident in question is being resisted by the respondents on the ground of delay in filing the same. If he had not filed any petition for claim till 14-11-1994 in respect of the accident, which took place on 4-12-1990, in view of the amending Act he became entitled to file such claim petition, the period of limitation having been deleted, the petition which has been filed and is being pursued upto this Court cannot be thrown out on the ground of limitation."

In my view, the present case is squarely covered by the ratio laid down by the Apex Court in the case of Dhannalal. The Apex Court has held that full benefit should be given to the amendment of the statute so that the intention of the Parliament is not defeated. In the present case also, the intention of the Legislature was to give benefit to the tribals and provide for enabling them to file an application for restoration, if for some reason they have not filed an

application within a period of three years as required under the original provision. A similar view has been taken by the Apex Court in various cases which provide that whenever a beneficial legislation is to be interpreted, it has to be given its full effect so that the intention of the Legislature is not defeated.

25. The Apex Court in the case of Dahiben, cited supra, has observed as under:--

"D. When substantive rights are taken away, ordinarily the statute would not be retrospective except where there is express provision or the same were to follow by clear implication. But in the case of rent control statute, it being a beneficial legislation, the benefit of the same should be made available to the tenant even though the same takes away vested right of the landlord unless there is express provision or clear implication to the contrary."

The Apex Court in the case of The New India Assurance Co. Ltd. Vs. C. Padma and Another, has held that the benefit of amended provisions is to be given irrespective of the fact that the cause of action arose prior to the enforcement of the Amendment Act or under old Act. The present case also would be governed by the law laid down by the Apex Court in the said case with full force.

26. As already discussed, the Apex Court has itself held that in a beneficial legislation, by way of amendment also, the rights which have already accrued or vested can be taken away. Therefore, the contention raised by Shri Naik in this behalf is also without substance. Insofar as the last submission of the learned Counsel for the petitioner that the latter cases of the Apex Court do not take into consideration the judgment of the Constitution Bench in the case of Shyam Sunder and Another Vs. Ram Kumar and Another, is concerned, the same is also without any substance. The question regarding the retrospectivity of the amendment is to be decided upon the scheme of the individual enactment. The Apex Court in the aforesaid case has itself observed as under:--

"The right of pre-emption may be a weak right but nonetheless the right is recognised by law and can be allowed to be defeated within the parameters of law. A statute which affects the substantive right has to be held prospective unless made retrospective either expressly or by necessary intendment."

It is thus clear that the Apex Court does not hold that a statute which affects the substantive rights has to be held prospective. The Apex Court has itself observed that it will depend upon the intention of the Legislature as to whether the Act has to be given effect retrospectively or prospectively and that the retrospectivity or otherwise will have to be taken into consideration either by express or necessary intendment.

27. As already discussed hereinabove, the intention of the Legislature is clear. The scheme of Sections 3 and 4 of the said Act after amendment by 1991 Act provides for a tribal-transferor to apply for restoration of land within the period of 30 years from the commencement of the Act, i.e. 1-11-1975. It is thus clear that even as on today, the application of the respondent No. 2 would have been

within limitation. In my view, the law laid down by the Apex Court in Dhannalal's case and New India Assurance Co. Ltd. cited supra, applies with full force to the facts of the present case. If it is held that the application of the respondent No. 2 is liable to be thrown away since it was not within limitation, it will defeat the intention of the Legislature. As already pointed out hereinabove, the said Act has been amended by Act of 1991 so as to enable all such tribals to make such an application even if the limitation had expired earlier.

28. The petition is, therefore, devoid of substance and is dismissed. Rule is accordingly discharged with no order as to costs.