

(2012) 09 SC CK 0078

In the Supreme Court Of India

Case No : Civil Appeal No's. 6741-6742 of 2012 (Arising out of SLP (Civil) No's. 33006-33007 of 2010) and Civil Appeal No. 6743 of 2012 (Arising out of SLP (Civil) No. 14771 of 2011)

State of Rajasthan and Others

APPELLANT

Vs

Aanjaney Organic Herbal Pvt. Ltd.

RESPONDENT

Date of Decision : 20-09-2012

Acts Referred:

Constitution of India, 1950 — Article 341, 342

General Clauses Act, 1897 — Section 3(42)

Rajasthan Tenancy Act, 1955 — Section 42

Citation : AIR 2013 SC 581 : (2012) AIRSCW 5194 : (2013) 1 CDR 193 : (2013) 1 CHN 58 : (2012) 7 MLJ 747 : (2012) 9 SCALE 138 : (2012) 10 SCC 283 : (2012) 6 Supreme 695 : (2012) 4 WLN 117

Hon'ble Judges : K.S. Panicker Radhakrishnan, J; Dipak Misra, J

Bench : Division Bench

Advocate : Manish Singhvi, AAG and Irshad Ahmad, for the Appellant; P.P. Choudhary Rajesh K. Bhardwaj and Vipin Gupta, for the Respondent

Final Decision : Disposed Of

Judgement

K.S. Panicker Radhakrishnan, J.—Leave granted.

2. We are, in this case, called upon to decide the question as to whether the transfer of land from a member of Scheduled Caste to a juristic person, other than Scheduled Caste, is void, in view of the provisions of Section 42(b) of the Rajasthan Tenancy Act, 1955 (for short 'the Act').

3. The High Court of Rajasthan has answered the above question in several cases holding that such a transfer would not be hit by the above mentioned provision, since the expression 'person' would not take in a 'juristic person' and that juristic person does not have a caste and, therefore, any transfer made by a Scheduled Caste person would not be hit by Section 42(b) of the Act.

4. In the impugned judgment, reliance has been placed on an earlier judgment of

the High Court of Rajasthan in *State of Rajasthan v. Indian Oil Corporation* 2004 (5) WLC (Raj.) 703, which held as follows:

6. It goes without saying that though the Indian Oil Corporation is a juristic person but it does not have a caste. Thus the sale in favour of Indian Oil Corporation by a member of Scheduled Caste is not covered by the provisions of Section 42 of the Rajasthan Tenancy Act. Thus taking into totality of the facts and circumstances, we feel that it is not a fit case where the delay of 480 days should be condoned. The special leave is rejected.

5. The judgment in *IOC (supra)* was challenged before this Court by the State of Rajasthan in C.C. No. 19386 of 2010 with an application for condonation of delay of 2798 days. This Court dismissed the petition with costs vide order dated 4.1.2011, since the delay was not properly explained.

6. We are informed that since the special leave petition, arising out of CC No. 19386 of 2010, was dismissed, the judgment in *IOC (supra)* is treated as law so far as the State of Rajasthan is concerned and being followed in various other similar cases. It is, therefore, necessary to examine the various legal issues raised before us so as to render an authoritative pronouncement on the question posed before us.

7. The Respondent is a private limited company registered under the Indian Companies Act vide Registration Certificate of Incorporation dated 17.8.2005. The Company purchased 25 bighas of land in Khasra No. 840/651 situated in Village Jetasan Patwar area Jetasan Tehsil, Rajasthan, out of which 9.73 bighas belonged to the members of Scheduled Caste. That property was purchased on 26.9.2005 by a registered sale deed for a consideration of Rs. 60,000/-. An application was preferred by the Respondent before the Revenue Authorities for mutation of the property. The same was refused placing reliance on a circular dated 19.11.2005, which stated that mutation could be effected only if the transfer was between the members of Scheduled Caste/ Scheduled Tribe, as the case may be. Since the application for mutation was refused, the Respondent herein filed S.B. Civil Writ Petition No. 169/2006, which was allowed by a learned single Judge. Aggrieved by the same, the State preferred an appeal before the Division Bench, being D.B. Civil Writ Special Appeal (Writ) No. DR (J) 1177/2008, which was also dismissed following the judgment in *IOC (supra)*.

8. Heard Learned Counsel on either side. The Act is a beneficial legislation which takes special care to protect the interest of the members of Schedule Caste and Schedule Tribe. Section 42 provides some general restrictions on sale, gift and bequest of the interest of Scheduled Caste and Scheduled Tribe, in the whole or part of their holding. The reason for such general restrictions is not only to safeguard the interest of the members of Scheduled Caste and Scheduled Tribe, but also to see that they are not being exploited by the members of non-Scheduled Caste and Scheduled Tribe. The relevant provisions of Section 42(b) are extracted below for easy reference:

42. General restrictions on sale, gift & bequest - The sale, gift or bequest by a Khatedar tenant of his interest in the whole or part of his holding shall be void if

(a) xxxxxxxx deleted

(b) Such sale, gift or bequest is by a member of a Scheduled Caste in favour of a person who is not a member of the Scheduled Caste, or by a member of a Scheduled Tribe in favour of a person who is not a member of the Scheduled Tribe.

9. Shri P.P. Choudhary, learned senior counsel appearing for the respondent, submitted that the expression 'person', as such, is not defined in the Act and, therefore, we have to go by the definition of 'person' under the General Clauses Act, 1987. The General Clauses Act defines the expression 'person' as follows:

3(42). 'Person' shall include any company or association of body or individuals, whether incorporated or not.

10. Learned senior counsel, therefore, submitted that, if it is so read along with Section 3(42) of the General Clauses Act, the expression 'person' used in Clause (b) of Section 42 of the Act takes in a juristic person as well and, therefore, if a member of Scheduled Caste sells his property to a juristic person, the sale cannot be declared as void, since a juristic person has no caste.

11. Dr. Manish Singhvi, learned Additional Advocate General appearing for the State of Rajasthan, on the other hand, contended that we cannot read Section 3(42) of the General Clauses Act into Section 42(b) of the Act, out of context. Learned Counsel submitted that the expression 'person' used in Section 42(b) of the Act is a natural person and not a juristic person and if the transfer is by a member of Scheduled Caste or Scheduled Tribe to a person who is not a member of Scheduled Caste or Scheduled Tribe, then such a transfer is void u/s 42 of the Act.

12. Article 341 of the Constitution empowers the President by public notification to specify the castes, races or tribes which shall, for the purpose of the Constitution, be deemed to be Scheduled Castes in relation to that State or Union Territory etc. Article 341 of the Constitution reads as follows:

341. Scheduled Castes.-(1) The President may with respect to any State or Union Territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under Clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

13. Article 342 of the Constitution deals with 'Scheduled Tribes' and reads as follows:

342. Scheduled Tribes. - (1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union Territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under Clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

14. The expressions 'Scheduled Castes' and 'Scheduled Tribes', we find in Section 42(b) of the Act have to be read along with the constitutional provisions and, if so read, the expression 'who is not a member of the Scheduled Caste or Scheduled Tribe' would mean a person other than those who has been included in the public notification as per Articles 341 and 342 of the Constitution. The expression 'person' used in Section 42(b) of the Act therefore can only be a natural person and not a juristic person, otherwise, the entire purpose of that section will be defeated. If the contention of the company is accepted, it can purchase land from Scheduled Caste / Scheduled Tribe and then sell it to a non-Scheduled Caste and Scheduled Tribe, a situation the legislature wanted to avoid. A thing which cannot be done directly can be not done indirectly over-reaching the statutory restriction.

15. We are, therefore, of the view that the reasoning of the High Court that the Respondent being a juristic person, the sale effected by a member of Scheduled Caste to a juristic person, which does not have a caste, is not hit by Section 42 of the Act, is untenable and gives a wrong interpretation to the above mentioned provision.

16. We are also of the view that the Revenue Authorities rightly refused the mutation as per circular dated 9.11.2005. Condition No. 7(2) of the circular was rightly invoked by the Revenue Authorities in denying mutation, which condition is extracted below for easy reference:

7(2). If the khatedar of Scheduled Caste / Scheduled Tribe executes sale to such a person of Scheduled Caste / Scheduled Tribe who is office-bearer of any firm/society/company/legal institution, then the mutation on the basis of registration shall be made only in the name of that particular person/vendee who is a member of Scheduled Caste/Scheduled Tribe and not in the name of that firm/society/company/legal institution wherein he is office-bearer or member.

17. The above mentioned condition makes it amply clear that the mutation on

the basis of registration shall be made only in the name of that particular person/ vendee who is a member of Scheduled Caste/Scheduled Tribe and not in the name of any firm/society/company/legal institution wherein a person is office-bearer or member. When we apply the above principles to the transfer of land in question, we have no hesitation to hold that the sale deed effected on 26.9.2005 was void and therefore rightly denied mutation in Revenue records. Property, therefore purchased by the Respondent from the members of Scheduled Caste vide sale deed dated 26.9.2005 and other sale deeds, therefore are void since hit by Section 42(b) of the Act and it is so declared. The State can, therefore, re-possess the lands and return the lands to the original owners who are members of Scheduled Caste.

18. We may hasten to add, at times, Section 42(b) may go against the interest of the members of Scheduled Caste / Scheduled Tribe as well. There may be several situations where they intend to sell the property for purposes like marriage of son/daughter or to purchase a better property and so on, but in that event sometimes they may not get a better competitive price, if the sale is made only among the members of Scheduled Caste / Scheduled Tribe. We have come across legislations where provisions are made enabling them to sell their lands to the members of non-Scheduled Caste / Scheduled Tribe, on getting permission from the prescribed authority. Such a provision may be sometimes helpful to the members of Scheduled Caste / Scheduled Tribe to get a better price for their land but it is for the legislature to incorporate appropriate provision in the Rajasthan Act.

19. Consequently, the appeals are allowed and the judgments of the learned single Judge and the Division Bench of the High Court are set aside. However, there will be no order as to costs.