

(2003) 07 AP CK 0002

Andhra Pradesh High Court

Case No: Writ Petition No"s. 6897 of 2001 and 3353 of 2002

Adarsha Adivasi Mahila Samithi
and Others

APPELLANT

Vs

Agent to the Government and
Others

RESPONDENT

Date of Decision: July 28, 2003

Acts Referred:

- Andhra Pradesh Scheduled Areas Land Transfer Regulations, 1959 - Section 2, 3(1)

Citation: AIR 2003 AP 536 : (2003) 5 ALD 284 : (2003) 5 ALT 287

Hon'ble Judges: D.S.R. Varma, J

Bench: Single Bench

Advocate: P.V. Ramana, in WP No. 6897 of 2001 and V. Raghu, in WP No. 3353 of 2002, for the Appellant; Government Pleader for Tribunal Welfare for Respondent Nos. 1, 2 and 5 in WP No. 6897 of 2001, G. Jyothi Kiran, SC for APSRTC for Respondent Nos. 3 and 4 in WP No. 6897 of 2001 and for Respondent Nos. 1 and 2 in W.P. No. 3353 of 2002 and V.S.R. Anajaneylu, for the Respondent Nos. 4 and 5 in WP No. 3353 of 2002, for the Respondent

Final Decision: Allowed

Judgement

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1. Heard both the sides.
2. Since the issue involved in both the writ petitions is one and the same, except minor details like dates and places of tender notification, they are being disposed of by this common order.
3. The petitioner"s are the societies consisting of the members belonging to the scheduled tribes. Their grievance in both the writ petitions is that the Andhra Pradesh Road Transport Corporation (for short "the Corporation"), which is an instrumentality of the State is leasing the stalls/shops in the Bus Stations situated in

agency areas, to non-tribals by inviting tender, which is contrary to Section 3 of Andhra Pradesh Scheduled Areas Land Transfer Regulations, 1959 (for short "the Regulations") and also contrary to the law laid down by the Supreme Court in [Samatha Vs. State of A.P. and Others](#), . The petitioners also relied on a judgment of a Division Bench of this Court reported in Pingili Pratap Reddy v. Dandu Pullam Raju 1989 (3) ALT 319, and stated that any transfer of immovable property contrary to Section 3 of the Regulations is null and void. Hence they sought for setting aside the tender notifications and consequently allotment made in favour of the non-tribals.

4. The respondent-Corporation filed counter-affidavit denying the allegations made by the petitioners. It is stated that since the writ petitions arise out of a non-statutory contractual obligation they are not maintainable and the remedy lies with the appropriate civil Courts.

5. It is further stated that Section 3(1)(a) of the Regulations prohibits only transfer of immovable property in Agency tracts in favour of non-tribals, but they are not transferring any immovable property to non-tribals. It is stated that the Corporation is allotting stalls/shops etc., to the highest tenderers by collecting monthly licence fee and hence the said transaction does not amount to any transfer of any interest in land, but it amounts to only granting licence to run the stalls/shops, while the possession is enjoyed by them. It is stated that by granting licence they are only giving right to the highest tenderers to carry on business and as stated above, no interest is transferred in favour of them. It is further stated that since no interest in the property is created in favour of licensees and since only permission is granted to run shops, it amounts to only granting licence, but not lease. In support of this contention, the Corporation relied on the judgments reported in [Board of Revenue and Others Vs. A.M. Ansari and Others](#), , [Brahm Raj Vs. Smt. Vidya Wati and others](#), APSRTC v. N. Jayalakshmi 1989 (2) ALT 247, and [Prakash Sao Vs. Bihar State Road Transport Corporation and Another](#), .

6. The respondent-Corporation further relied on a judgment reported in [S. Sudhakara Gupta Vs. APSRTC, Mushirabad, Hyd. and Others](#), , in order to contend that u/s 18 of the Road Transport Corporation Act, the Corporation is excepted to secure an efficient economical system of road transport services and for that purpose, it can acquire, hold and transfer the property.

7. The Corporation also relied on a judgment of the Apex Court reported in [Kamlesh Kumar Sharma Vs. Yogesh Kumar Gupta and others](#), , in order to contend that the general expressions occurring after specified group of words shall not be given wider interpretation so as to include all transactions which are not specifically intended and that if such an interpretation is given, it will cause injustice to other legitimate persons.

8. Finally the stand of the Corporation is that since granting licence is not specifically barred u/s 3 of the Regulations and also since there is no transfer of any immovable

property in favour of a non-tribal, they are entitled to issue tender notification and allot the stalls/ shops to highest tenderers.

9. The 3rd respondent in WP No. 3353/2002 who was awarded tender by the respondent - Corporation pursuant to the impugned tender notification, filed a counter affidavit and supported the stand of the Corporation and sought for dismissal of the writ petition.

10. This Court while admitting WP No. 3353/2002 granted interim stay of the impugned proceedings. Similarly while admitting WP No. 6897/2001 this Court directed that the licences granted pursuant to the tender notification is subject to final orders in the writ petition.

11. At the outset, taking into account the judgments relied on by the Counsel for the Corporation cited (supra) and also considering the contents of deed of licences entered into by the Corporation with the highest bidders, I am in agreement with the contention that the Corporation granted only "licence", but not "lease", since it has granted only right to possess the property while the legal possession remains with it. But the issue will not end here and this Court is required to consider whether such granting licence is justified or not in the light of the object of the enactment of the Regulations.

12. Therefore, in view of the above rival contentions the broad question that falls for consideration is whether the action of the respondent-Corporation in allotting stalls/shops to non-tribals in the Agency tracts even by way of licence, is illegal and contrary to Section 3 of the Regulations and also to the law laid down by the Apex Court in Samata case (supra) ?

13. In order to advert to the above issue, it is necessary to look into the relevant provisions. Section 2(g) defines "Transfer" and Section 3 of the Regulations deal with prohibition with regard to transfer of immovable property in agency tracts. The above provisions to the extent relevant are extracted as under for ready reference:

Section 2(g) "Transfer" means mortgage with or without possession, lease, gift, exchange or any other dealing with immovable property, not being a testamentary disposition and includes a charge on such property or a contract relating to such property in respect of such mortgage, lease, gift, sale exchange or other dealing.

3. Transfer of immovable property by a member of Schedule Tribe:

(1)(a) Notwithstanding anything in any enactment, rule or law in force in the Agency tracts, any transfer of immovable property situated in the Agency tracts by a person, whether or not such person is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of a person, who is a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964) which is composed solely of members of the Scheduled Tribes.

(b).....

(c).....

(2).....

(3).....

(4).....

14. A combined reading of the above provisions makes it clear that any transfer of immovable property situated in Agency tracts by way of mortgage with or without possession, lease, sale, gift, exchange or any other dealings and charge on such property or contract in respect of such mortgage, lease, gift, sale, exchange or other dealings, by a person whether or not he is a member of a Scheduled Tribe, in favour of a non-tribal is null and void, except made in favour of a person who is a member of a Scheduled Tribe or a society, which is composed solely of members of the Scheduled Tribes.

15. Further the Apex Court in Samata case (supra) gave an interpretation that State and its instrumentalities can also be treated as "person" occurring in the first part of Section 3(1)(a). Therefore, as per the interpretation given by the Apex Court, even the State or its instrumentalities are prohibited from transferring any immovable property situated in Agency tracts to non-tribals as per Section 3 of the Regulations. Since the respondent-Corporation is an instrumentality of the State, it is bound by the prohibitions contained in Section 3 of the Regulations.

16. Now it has to be seen whether there is any such transfer of immovable property in favour of non-tribals in the Agency tracts.

17. Here the contention of the Standing Counsel for the respondent-Corporation Smt. Jyothi Kiran is that as per Section 2(g) "transfer" means mortgage with or without possession, lease, sale, gift, exchange or any other dealings or charge on such property and also contract in respect of the those dealings mentioned above. She further contends that permission granted to run shops is only a licence and since it is not mentioned in the definition of "transfer" u/s 2(g), the same does not amount to transfer. She submitted that under licence the licensee is only permitted to run the shop and there is no transfer of immovable property and also no interest is created in the property and further the possession remains with the Corporation. She further contended that the word "licence" cannot be equated with the dealings mentioned in the section, since under the said dealings there is transfer of interest over the immovable property to other party and whereas under licence there is no such thing. She further contended that since the nature of transaction under licence is different from dealings mentioned in the section, it cannot also be read under the general terms "other dealings" occurring in Section 2(g).

18. Prima facie, I am not in agreement with the above contention of the learned Counsel for the Corporation. While interpreting the words in the sections, particularly in the present regulations under Agency Laws, which are enacted under beneficial legislation, the basic principle that has to be kept in mind is the object and intention of the Legislature for enactment of the Act or Regulations. If that is kept in mind, then strict technical interpretation of the terms used in the sections, detrimental to the main object, can easily be avoided. Further if an harmonious interpretation is given to all the provisions, keeping in view the object, then the intention of the Legislature for enacting the special rules and regulations for agency areas, will be fulfilled and the economic and social justice aimed by the Constitution will be reached to one and all, and particularly the tribals.

19. Hence I will advert to the technical objection raised by the Counsel for the respondent-Corporation, keeping in view the object of the Regulations.

20. It is well settled that the general terms following several words have to be read in "ejusdem generis" that is to say in relation to the other words occurring in the section. Section 2(g) while defining the word "transfer" refers to terms like mortgage, lease, sale, gift, exchange or other dealings. What are the dealings or transactions that can be read under the words "other dealings" is the question. As stated above other dealings should be some what similar to the specified dealings in the section, though not exactly the same. Under the specified dealings in the section, the common factor is that there is some passing of the interest over the immovable property in one form or the other. In other words it can be said that there is passing of some temporary or permanent interest in the property in favour of other party.

21. Coming to the case on hand the Corporation has allotted the stalls/shops to non-tribals by issuing tender notifications. By this allotment, as stated by the Corporation itself, it has given right to the non-tribals to possess the said immovable property, to do some business by way of granting licences. This right is a temporary right and will exist during the currency of the licence. Under this right the licensees can do business for supplementing their income.

22. Further in my considered view, though the present transaction which is temporary in nature may not be equated with the dealings mentioned in the Section 2(g) like mortgage, sale, gift, exchange, charge over the property or contract in respect of those dealings, since as stated above under these type of dealings the property is transferred either temporarily or permanently and some interest is created in favour of the other party. But under licence even though no interest is created, some temporary right is given to enjoy the property. The other transaction mentioned in the Section 2(g) is the lease under which an interest in immovable property is created for a certain period in consideration of a price. Though there are number of differences in strict legal, terms, but in my view there are some broad similarities between the words "licence" and "lease", though not with other

transactions like mortgage, sale, gift, exchange etc. It can be accepted without any agitation that both the licensee or the lessee if over stays the period permitted to them, then it becomes unlawful and both of them can be evicted, of course following the due process of law under different Acts. Further even though some right in any form is created in favour of either licensee or leasee, the same is always subject to certain terms and conditions and during the currency of lease or licence, both of them are prohibited from alienating the property and also doing certain acts contrary to the terms and conditions of the agreement of licence or lease and they can only enjoy the property in different forms. Hence in my view there are certain similarities between the lease and licence. Therefore, even if the term licence is not specifically mentioned in the definition of "transfer" u/s 2(g), it can safely be read under the general expression "other dealings" mentioned in the section.

23. Indubitably the general expression "other dealings" mentioned in the definition of "transfer" u/s 2(g), cannot be said to be totally unconnected with the transactions mentioned in the section. Because as stated already, under all those transactions there is some transfer of property or interest to the other party. Though under licence interest over the property may not be transferred, but some right is given to enjoy the property. That right may not strictly fall in the transactions specifically mentioned in the section, but in my considered view it will definitely fall under the general expression "other dealings" with immovable property. Because the other dealings have to be necessarily relate to immovable property. Here the Corporation has given right to the highest bidders in the auction, who are non-tribals to possess the immovable property. Therefore, some right though not strictly transfer of interest in immovable property, is created in favour of the non-tribals, since they are allowed to possess the property and carry on the business. Hence in my considered view the word "licence" can safely be read under the general terms "other dealings" mentioned in Section 2(g). Otherwise there is no need for the Legislature to incorporate the general words in the section. If any narrow interpretation is given, confining only to the terms mentioned in the section, then the use of the words "other dealings" would become redundant. Therefore, as already stated above, if the interpretation is given keeping in view the object behind the enactment of the respective acts or regulations, then definitely there will not be any controversy.

24. Further from a reading of Section 3(1)(a) of the Regulations it would reveal that transfer of immovable property in agency tracts to non-tribals is expressly prohibited. The real intention of the lawmakers, apparently keeping in view the object of the statute, is to prohibit all dealings/transactions relating to the immovable property in agency tracts including the transactions, which are specifically mentioned under the definition of "transfer" in Section 2(g) of the Regulations. In my considered view the general expression "other dealings" occurring in the definition of "transfer" should have been preceded the -specified transactions mentioned in the section, by which it would have been more clearer. Hence, the provisions in my anxious consideration should be read and understood

as a regulation, prohibiting all dealings/ transactions, including mortgage with or without possession, lease, gift, exchange, charge on such property or a contract in relation to such property in respect of such mortgage, lease, gift, sale exchange. To put it in a different way, the main thrust should only be on the general expression "other dealings". If the transactions specifically mentioned in the definition of "transfer" u/s 2(g) are understood only as illustrations, then the provision u/s 3(1)(a) of the Regulations, attains wholesomeness and will subserve the object for which the regulations were enacted. Hence, in my considered view the questions like whether any legal interest in the immovable property is created in favour of a non-tribal; or that the subtle difference between the words "licence" or "lease" should not be grounds for the respondent - Corporation to over take the object of the statute, particularly Section 3(1)(a) of the Regulations.

25. Further as stated above no word used in the statute shall be understood as redundant and the general words after specified words, shall be interpreted keeping in view the object and reasons for the enactment of the Act or Regulation as the case may be. The Hon"ble Apex Court in the decision reported in [Tribhuban Parkash Nayyar Vs. The Union of India \(UOI\)](#), , while commenting upon the principle "ejusdem generis" observed that statute has to be construed as a whole and that no word in a statute are presumed to be superfluous. The relevant portion at paragraph No. 13 of the judgment is extracted as under for ready reference:

13.....When in a statute there are general words following particular and "specified words", the general words are some times construed as limited to things of the same kind as those specified. This rule of interpretation generally known as ejusdem generis rule has been pressed into service on behalf of the appellant. This rule reflects an attempt to reconcile incompatibility between the specified and general words, in view of the other rules of interpretation, that all words in a statute are given effect if possible, that a statute is to be construed as a whole and that no words in a statute are presumed to be superfluous. Ejusdem Generis rule being one of the rules of interpretation, only serves, like all such rules, as an aid to discover the legislative intent; it is neither final nor conclusive and is attracted only when the specific words enumerated, constitute a class, which is not exhausted and are followed by general terms and when there is no manifestation of intent to give broader meaning to the general words.

26. From the above judgment it is clear that even though the principles of "ejusdem generis" rule is not final and conclusive, but helps to discover the legislative intent and that no word used in the statute should be understood as superfluous. In the present case also, as discussed above, the general expression "other dealings" used in the definition of transfer u/s 2(g) has to be understood keeping in view the object and intent of the legislation and if that is kept in mind, the dealing under the word "licence" can be read under the general expression "other dealings" and thus amounts to transfer of immovable property, which is prohibited u/s 3(1)(a) of the

Regulations.

27. Further coming to the decision relied on by the Corporation in Kamlesh Kumar Sharma's case (supra) it is clear that this case is not of any avail to the Corporation. In fact the essence of the observations of Their Lordships of the Apex Court at paragraph No. 13 of the judgment is to the effect that the interpretation of the general expressions in the section shall not thwart the very object of the Act. In the said case, interpreting the word "otherwise" occurring in Section 13(4) of the U.P. Higher Education Services Commission Act, 1980, Their Lordships held that the said word should be read as ejusdem generis, that is to in group of words used in the Section. The purport of the words used in the said section refer to say filling up of the vacancies from the existing panel arising out of unforeseen contingencies. When the appellant therein sought to interpret the word "otherwise" for filling up the vacancies from the panel which are either anticipated or foreseen, Their Lordship negatived the request and in those circumstances held that general expressions occurring after specified group of words shall not be given wider interpretation so as to include all the contingencies, which are not intended to by the legislation.

28. Therefore, I conclude that in order to have a harmonious interpretation the word "licence" can be read under the general expression "other dealings", used in Section 2(g) of the Regulations.

29. Be the above position as it may, now it is necessary to look into the object of the Regulations. It is well known that Agency tracts are inhabited by tribals who because of their isolation from the general public and also because of their customs and innocence, are gullible and prone to exploitation. In order to prevent them from being exploited and make them mingle with the other people living in developed towns and cities and improve their standard of living and in order to bring socio-economic equality and justice to them, the makers of the Constitution under Fifth schedule read with Article 244(1) have made certain provisions for the welfare of the tribals in the agency tracts and for that purpose the Governor is empowered to make laws in the agency areas for the welfare of the tribal people. In that process the present Regulations have come into existence.

30. Further the Hon"ble Supreme Court in the Samata case (supra) has delivered an erudite judgment with regard to the object of the enactment of agency laws and the welfare of the tribals,

31. In the said case the issue was whether the State can transfer immovable property situated in agency tracts to non-tribals by way of lease etc., u/s 3(1)(a) of the present Regulations. The majority of the Bench held that such transfers cannot be permitted.

32. Further as already stated above, the majority view of the Bench while interpreting the word "person" occurring in part of Section 3(1)(a) of the Regulations is that it include State Government and its instrumentalities.

33. The object of the Fifth Schedule to the Constitution of India in the words of the Supreme Court is to establish an egalitarian social order, ensuring socio-economic empowerment to Scheduled Tribes. While referring to the object of the Fifth Schedule and the Regulations, the Supreme Court made certain observations at paragraphs 52, 60, 92, 94 and 97. The relevant observations from the above said paragraphs, compiled at one place under the head note of the judgment are extracted as under for better appreciation:

"... The object of the Fifth Schedule and the Regulation is to preserve tribal autonomy, their culture and economic empowerment to ensure social, economic, and political justice for preservation of peace and good Government in the Scheduled Areas. Therefore, all relevant clauses in the Schedule and the Regulation should harmoniously and widely be read so as to elongate the aforesaid constitutional objectives and dignity of person belonging to the Scheduled Tribes, preserving the integrity of the Scheduled Areas and ensure distributive justice as an integral scheme thereof. It is an established rule of interpretation that to establish Socialist Secular Democratic Republic, the basic structure under the rule of law, pragmatic, broad and wide interpretation of the Constitution makes social and economic democracy with liberty, equality of opportunity, equality of status and fraternity a reality to "we, the people of India", who would include the Scheduled Tribes. All State actions should be to reach the above goal with this march under rule of law. The interpretation of the words "person", "regulation" and "distribution" required to be broached broadly to elongate socio-economic justice to the Tribals."

34. While giving the above interpretation to the word "person" occurring in first part of Section 3(1)(a) of the Regulations, the Apex Court held at paragraph No. 94 as under :

"..... We are, therefore, inclined to take the view that the word "person" includes the State Government. The State Government also stands prohibited to transfer by way of lease or any other form known to law, the Government land in Scheduled Areas to non-tribal person, be it natural or juristic person except to its instrumentality or a Co-operative Society composed solely of tribes as is specified in the second part of Section 3(1)(a), any other interpretation would easily defeat the purpose (sic) exclusive power entrusted by the Fifth Scheduled to the Governor."

It was further held at paragraph No. 95 as under :

".....It thus manifests that Constitution and legislative intention that tribals and a cooperative society consisting solely of tribals alone should be in possession and enjoyment of the land in the Scheduled Area as dealt with in various enactments, starting from Gunjan and Vizianagaram Act, 1839 to the present regulations.

35. It is to be noted that Section 3(1)(c) of the Regulations deals with procedure where a Scheduled Tribe is unable to sell his land for various reasons. Further Section 3(2)(b) of the regulations deals with the procedure that the Agency Divisional

Officer has to follow where the transferor or his heirs not willing to take back the property or where their whereabouts are not known to the Agency Divisional Officer or the prescribed officer, as the case may be. Though the present transaction does not fall under these sub-sections of Section 3, but it is relevant to take note of the broad observations made by the Apex Court while interpreting the words occurring in these sub-sections of Section 3 of the Regulations. For ready reference those observations at paragraph No. 190 are extracted as under:

.....The words "or in any other manner" in para 3(1) (c) or the words "otherwise dispose of it as if it was property at the disposal of the State Government" occurring in para 3(2) (b) have to be read in that context with the result that even if the Government intended to deal with such immovable properties "in any other manner" it could deal only in a manner which would ultimately benefit a member of the Scheduled Tribe or their co-operative societies. The Fifth Schedule including para 5 thereof as also the Regulations made thereunder by the Governor of Andhra Pradesh clearly seek to implement the national policy that the custom, culture, life style and properties of the Scheduled Tribes in the Agency tracts and the other immovable properties situated therein shall be protected. The Government being under a legal constraint to deal with the property situated in the Agency tracts only in the manner indicated above, cannot itself act beyond the scope of the regulations by saying that it is free to dispose of its own properties in any manner it likes,

36. From the above extract, it is clear that the Hon"ble Supreme Court observed that even if the Government want to dispose of the immovable property which it has obtained from a Scheduled Tribe owing to his failure to sell his property or where the transferor or his heirs are not willing to take back the property or where their whereabouts are not known, then the Government cannot do so in any manner of its choice on the ground that it is the Government property. In those contingencies also, the Supreme Court held that the Government can deal with such property in such a manner which would ultimately benefit a member of the Scheduled Tribe or their Co-operative societies.

37. Therefore, from the above excerpts of the judgment of the Supreme Court and in the light of the object of the enactment of agency laws and regulations, it can safely be understood that Government or its instrumentalities while dealing with immovable property in Agency tracts, in any manner known to law, are prohibited to transfer the same in favour of any non-tribals. Granting licence is one of the modes to give right over the immovable property to possess and enjoy on payment of licence fee. Hence this mode, which is known to law, is also prohibited as per the judgment of the Apex Court.

38. Further as per the above judgment by virtue of the prohibition contained in Section 3(1)(a), the Government or its instrumentalities cannot transfer the land in Agency tracts by sale, allotment, and lease or by way of any other dealing to a non-tribal. If the principle of ejusdem generis is applied, the "licence", though not

specifically mentioned in the section, can be read under the general expression "any other dealings" occurring in the definition of "transfer" u/s 2(g) and as such falls within the prohibition contained u/s 3(1)(a) of the Regulations.

39. Further from the above judgment of the Supreme Court it is also clear that even if the Government want to deal with immovable property in its possession, in any manner known to law, it should be dealt with in such a manner, which would ultimately benefit a member of the Scheduled Tribe or their co-operative society only. If this analogy is kept in mind, then if the Corporation is allowed to allot the stalls in the Bus Stations which are in Agency tracts to non-tribals, then it can be presumed that it will result in curtailing the opportunity to tribals and will not benefit Scheduled Tribes or their Co-operative Societies and hence this type of action is prohibited as per the judgment of the Apex Court.

40. Therefore, in my view though the respondent-Corporation has carefully camouflaged their acts by saying that they granted only licence but not lease, but in view of the judgment of the Apex Court, since the acts of the Corporation are not beneficial to the interest of the tribals, such acts can definitely be found fault with.

41. Therefore, even if the trump-card of the Corporation that it has granted only licence but not lease, is accepted, then also the transaction is hit by Section 3(1)(a) read with Section 2(g) of the Regulations and also by judgment of the Apex Court.

42. Further even though the present transaction arises out of a non-statutory contractual obligation, since the very obligation is hit by the regulations and contrary to the judgment of the Apex Court and further when there is patent error of law and because of which injustice is being caused to the tribals and when they are deprived of their legitimate and legal right given to them under the Constitution, this Court definitely sitting under Article 226 of the Constitution of India exercising its extraordinary jurisdiction, can interfere with such matters.

43. In view of the foregoing reasons the impugned tender notifications in both the writ petitions are set aside and the writ petitions are accordingly allowed. No costs.