

**Smt. G. Varalakshmi Vs The Secretary to Government, Social Welfare
(LTR) Department, The Agent to Government (District Collector), The
Special Deputy Collector and Kowasu Baburao**

Court: Andhra Pradesh High Court

Date of Decision: July 29, 2013

Acts Referred: Constitution of India, 1950 " Article 226, 46
Limitation Act, 1963 " Section 28, 5

Citation: (2013) 5 ALD 518 : (2013) 6 ALT 780 : (2014) ALT(Rev) 36

Hon'ble Judges: M.S. Ramachandra Rao, J

Bench: Single Bench

Advocate: Sita Ram Chaparla, for the Appellant; B. Adinarayana Rao Counsel, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M.S. Ramachanpra Rao, J.

In this Writ Petition, petitioner is questioning G.O.Ms. No. 73 Social Welfare (LTR. 1) Department dt. 22-7-

2002 issued by 1st respondent on the ground that it is contrary to the provisions of Section 7 of the Andhra Pradesh Scheduled Areas Land

Transfer Regulation, 1959 (Regulation No. 1 of 1959) (for short, "the Regulation") apart from being illegal and arbitrary and prays to set it aside.

He also seeks a declaration that the petitioner is the lawful owner of lands in Sy. Nos. 79, 82/1, 82/2, F83 and 84/3 admeasuring Ac. 20-50 cents

situated at Itukulakunta village, Polavaram Mandal, West Godavari District (for short, "the subject lands"). The subject lands originally belonged to

one Sanyasi Nagulu, a member of the Scheduled Tribe community. Under a registered sale deed dt. 31-10-1938, he sold it to another member of

the said community by name Kovvasu Parvathamma. On her death, Kowasu Pottaiah, her son, allegedly sold the land to one Punem Singayya,

also a member of the Scheduled Tribe community, under a registered sale deed dt. 08-08-1963. u/s 3(1) (i) of the Regulation as it stood then, the

Governor of the State of Andhra Pradesh accorded sanction for the sale of this land in favor of the petitioner, a non-tribal vide G.O. Ms. No.

2285 (Education) dt. 15-11-1967. Thereafter, Punem Singayya executed a registered sale deed dt. 06-12-1967 in favor of the petitioner.

2. While so, the Special Deputy Tahsildar, Tribal Welfare No. II, Eluru filed a complaint in 1980 u/s 3(2)(a) of the Regulation No. 1/1959 as

amended by Regulation 1/1970 contending that the land belongs to Kowasu Polamma, wife of Kowasu Pottaiah; that she belongs to the

Scheduled Tribe community; that the petitioner, a non-tribal, is in possession and enjoyment of the subject lands; that Punem Singayya, although a

member of the Schedule Tribe community, was a farm servant of the petitioner; the sale under registered sale deed dt. 08-08-1963 in favor of

Punem Singayya by Koovvasu Pottaiah is a benami transaction and Punem Singayya was a benamidar for petitioner; no consideration was paid to

Kowasu Pottaiah and therefore, possession of the land should be restored to Kowasu Polamma after evicting petitioner and her husband from the

land.

3. This complaint was numbered as S.R. No. 219 of 1980 by the then Special Deputy Collector, Tribal Welfare, Eluru. He issued notices to

petitioner, her husband and Pottaiah. In the said proceeding, petitioner and her husband participated, filed a written statement and contended that

Singayya had sold lands to her after obtaining permission from the Government after receiving full consideration; and that the transaction under sale

deed dt. 06-12-1967 in her favor was valid and genuine. The Special Deputy Collector, Tribal Welfare, Eluru also examined Kowasu Polamma,

wife of Pottaiah, who stated that the petitioner's husband dispossessed her and her son from the subject land after the death of her husband stating

that they gave money to her husband for the lands and threatening them not to enter into the land. She stated that her husband never told her that

he sold away the land and that she has been putting petitions about the injustice done to her family, but no action was taken. She also stated that

her husband had not sold the land to Singayya, who is a farm servant of the petitioner and her husband. The husband of the petitioner was

examined as R.W. 1 and the petitioner herself was examined as R.W. 2. Singayya was examined as R.W. 3, and the village Karanam was also

examined in the said enquiry.

4. After considering the oral and documentary evidence on record, by order dt. 31-08-1981, the Special Deputy Collector, Tribal Welfare, Eluru

held that petitioner and her husband used Singayya, their farm servant, to circumvent the provisions of the above Regulation. He held that Singayya

was a tribal of Tangellagudem, hamlet of Dippakalapadu without any substantial means to purchase Acs. 20-00 of land; that the subject land was

too far away from his village and is considered to be not at all fertile and there is no valid explanation why he should have bought it; Singayya was a

farm servant of the petitioner and her husband and they found him very handy as he was obliged to them and could not displease them under any

circumstances; from the demeanor of Singayya and from his conflicting statements, it is clear that he was only a tool in the hands of petitioner; that

the village Karanam stated that Punem Singayya had Acs. 2-20 cents of land in Dippakayalapadu village only after the sale by him in favor of the

petitioner; that this bit of land was given to Singayya as reward by a relative of the petitioner for his faithful act of lending his name as a vendor in

the sale deed dt. 08-08-1963 executed by Pottaiah; that Singayya stated that he sold a few goats and purchased Acs. 20-00 cents of land and

such statement cannot be believed. He also held that the petitioner and her husband were not able to show that the transaction of sale by Pottaiah

in favor of Singayya under registered sale deed dt. 08-08-1963 was a genuine one, and if that transaction is not genuine, permission granted by the

Government under G.O. Ms. No. 2285, Education Department dt. 15-11-1967 is of no avail to the petitioner and her husband; that the

Government had no occasion to consider whether the above sale transaction dt. 08-08-1963 was genuine or not; and therefore, it is in violation of

Section 3(i)(a) read with Section 4 of the Regulation of 1/1959 as amended by Regulation 1/1970 since it is a transaction, though by a member of

the Scheduled Tribe in favor of another member of a Scheduled Tribe, for the benefit of non-tribals.

5. Aggrieved thereby, petitioner preferred an appeal before 2nd respondent u/s 3(3) of the Regulation. This appeal was numbered as S.R.A. No.

37/1981. By order dt. 15-01-1982, the 2nd respondent rejected the appeal and confirmed the findings of the Special Deputy Collector (Tribal

Welfare), Eluru in S.R. No. 219/1980. He also elaborately considered the evidence on record and came to the conclusion that the sale deed dt.

08-08-1963 was not genuine and it is difficult to believe that a poor tribal would buy the lands situated in a village at a distance of about 10 kms

from his place of residence instead of purchasing land in his own village; that the evidence on record reveals that Singayya never cultivated the

subject lands; that he was only a farm servant and henchman of the petitioner; these facts were not contradicted by petitioner; that Singayya had

stated before the Special Deputy Collector (Tribal Welfare), Eluru, initially that he purchased the land for Rs. 3,000/- about 15 years back with the

income from his Ac. 1-00 of land and with the sale consideration of 30 goats and that he did not incur any debt for purchasing of these lands, but

subsequently stated that he obtained a loan from the father of the petitioner by name Kakarla Venkata Subbanna, who is residing about 24 kms

away from the place of his residence. He held that these facts established that Singayya is not the real purchaser and petitioner is the real purchaser

under the sale transaction dt. 08-08-1963 and enjoyer of the above land.

6. This was challenged by the petitioner in a Revision petition dt. 19-01-1983 before the 1st respondent. Vide memo No. 299/F1/83-3 dt. 02-04-

1993, the said Revision Petition was rejected.

7. Aggrieved thereby, petitioner filed W.P. No. 12196 of 1993. Initially, the said Writ Petition was allowed, but subsequently, the 4th respondent

and other legal heirs of Kowasu Polamma, who died in the meantime, filed a review petition in Rev. W.P. M.P. No. 8044 of 1995 to review the

said order. The said application was allowed by order dt. 31-07-1996 and the Writ Petition was dismissed.

8. It was challenged by petitioner in Writ Appeal No. 1341 of 1997. By order dt. 28-02-2002, a Division Bench of this Court, set aside the order

dt. 31-07-1996 in Rev. W.P. M.P. No. 8044 of 1995 and also the order dt. 02-04-1993 in Memo No. 299/F1/83-3 of 1st respondent and

allowed the Writ Petition No. 12196 of 1993. It remitted the matter back to 1st respondent with a direction to hear and dispose of the Revision

petition afresh. It further permitted the petitioner to raise the contention relating to bar of limitation for initiation of the proceedings before the 1st

respondent in the Revision.

9. After remand, vide G.O. Ms. No. 73, Social Welfare (LTR. I) Department dt. 22-07-2002, 1st respondent again dismissed the Revision filed

by petitioner and confirmed the order dt. 15-01-1982 in S.R.A. No. 37 of 1981 of the Agent to the Government (2nd respondent).

10. This is impugned in the present writ petition.

11. Heard Sri Sita Ram Chaparla, learned counsel for petitioner, learned Government Pleader for Social Welfare appearing for respondents 1 to 3

and Sri B. Adinarayana Rao, learned Senior counsel for 4th respondent.

12. The learned counsel for petitioner contended principally that when the Government vide G.O. Ms. No. 2285 Education Department dt. 15-

11-1967 granted permission to Singayya to sell the above land to the petitioner, a non-tribal, the sale in favor of petitioner cannot be invalidated by

the respondent nos. 1 to 3 at the instance of 4th respondent; that they are subordinate in hierarchy to the authority which issued the said G.O. Ms.

No. 2285 and it is impermissible for them to do so; u/s 7 of the Regulation, the provisions of Limitation Act, 1908 apply to proceedings under the

Regulation, and therefore, it was not open to the Special Deputy Collector (Tribal Welfare), Eluru in 1980 to seek to reopen and invalidate the sale

deed dt. 06-12-1967 in favor of petitioner by Singayya; the issue of limitation was specifically raised before 1st respondent, but it was rejected

without proper consideration; that in the order dt. 28-02-2002 in Writ Appeal No. 1347 of 1997, it was held that provisions of the Limitation Act,

1908 would apply to all proceedings under the Regulation; and therefore, the 1st respondent has erred in holding that provisions of Limitation Act,

1908 do not apply to proceedings before him; in any event, Regulation 1/1970 has no application to the present case as petitioner had purchased

the property prior to 03-02-1970 and the said Regulation has been held to be prospective in operation by this Court and by the Supreme Court.

He relied upon the decisions reported in Jawadi Samba Murthy Vs. The Agent of the Government, East Godavari at Kakinada and others

1983(2) A.P.L.J. 96, Gadde Nagabushanamma Vs. Government of A.P. and others, Ambati Obi Reddy Vs. The Commissioner of Survey,

Settlement and Land Record, Hyderabad and others 1996(2) An. W.R. 516 K. Mahalaxmi and another Vs. Government of Andhra Pradesh and

others, Dy. Dy. Collector and Another Vs. S. Venkata Ramanaiah and Another, , Yandapu Satyavati and Another Vs. Secretary to Government

of Andhra Pradesh, Tribal Welfare Department and Others, Datla Narasimha Raju and others Vs. Principal Secretary to Government of Andhra

Pradesh, Special Welfare Dept. and others, and Pandi Ramulu Vs. Agent to Government, E.G. District, Kakinada and Others,

13. Learned counsel for 4th respondent contended that the petitioner's contentions are not tenable; that orders passed by respondent nos. 1 to 3

do not suffer from any error of jurisdiction or infirmity either in law or on fact; that respondent nos. 1 to 3 rightly focussed on the transaction under

the sale deed dt. 08-08-1963 by Pottaiah in favor of Singayya and held that the said transaction is a benami transaction and Singayya, a farm

servant of petitioner was simply a name lender to the transaction and that the real purchaser of the subject lands was petitioner; even u/s 3 of the

Regulation 1 of 1959 as it stood prior to its amendment by Regulation 1 of 1970, the respondents were entitled to go into the issue whether a

transaction, which is apparently a transaction between a tribal and tribal, is in reality also such a transaction or whether it was actually a transaction

between tribal and a non-tribal; if the respondent nos. 1 to 3, on appreciation of evidence, come to the conclusion that the transaction under the

sale deed dt. 08-08-1963, is in fact, a transaction between Pottaiah, a tribal and the petitioner, a non-tribal, they are entitled to set it aside; G.O.

Ms. No. 2285 dt. 15-11-1967 issued by 1st respondent will then not be of any assistance to petitioner as the real nature of the transaction of

1963 was not the subject matter of the said proceeding; when the fraud played by petitioner to circumvent the provisions of the Regulation (by

using the services of her farm servant Singayya) is established, it vitiates the purchase not only by Singayya, but also the subsequent purchase under

the sale deed dt. 06-12-1967 by petitioner from Singayya; the plea of the petitioner about the applicability of the law of limitation to initiation of

proceeding by the 3rd respondent against the petitioner is not tenable as the authorities under the Act are empowered to initiate proceedings,

without prescribing any limitation, u/s 3 of the Regulation 1 of 1959 to evict a non-tribal in possession of the property without any right to continue

in possession thereof; Section 3(2)(a) of the Regulation does not prescribe any period of limitation for respondent nos. 1 to 3 to take such action

for eviction of a non-tribal; the law of limitation as provided in the Limitation Act, 1908 or in the Limitation Act, 1963 applies only to Courts and

not to authorities such as respondent nos. 1 to 3 stated under the Regulation; Section 7 of the Act is intended to cover only situations governed by

Section 4 of the Act in respect of suits filed before the Agent to the Government and not to proceeding u/s 3; sub-Section (4) of Section 3 of

Regulation 1 of 1959, although inserted by Regulation 1 of 1970, has to be considered as having retrospective effect, notwithstanding the fact that

Regulation 1 of 1970 has been held to be prospective in operation by this Court and by the Supreme Court; that sub-Section (4) of Section 3 is to

be considered as explanatory and therefore it would have retrospective operation, as it merely clarifies the legal position; 4th respondent's mother

had been found to have made several representations to respondent nos. 1 to 3 to take action for eviction of petitioner and any delay on the part of

respondent nos. 1 to 3 in taking action cannot be taken advantage of by petitioner; in the facts and circumstances of the case, it has to be held that

proceedings were initiated within a reasonable period and without undue delay; in any event, it is not the case of petitioner that 4th respondent or

his mother or father have acquiesced in the transaction or that they have otherwise altered their position; in the absence of such evidence, even if

there is a delay in initiation of proceedings, such delay will not prejudice the 4th respondent in any manner; as the transaction under the registered

sale deed dt. 08-08-1963 between Pottaiah and Singayya is void and contrary to the provisions of the Regulation, it is not open to the petitioner to

plead any equities; having been a party to the fraud of obtaining a sale deed from a tribal Pottaiah, the petitioner cannot be allowed to contend that

the delay in initiation of proceedings defeats her rights and ask this Court to perpetuate the fraud; and therefore prayed that the writ petition be

dismissed. The learned counsel for 4th respondent relied on decisions in State of Jharkhand and Others etc. Vs. Shivam Coke Industries,

Dhanbad, etc., M/s. Punjab Traders and others Vs. State of Punjab Traders and others, Chairman, U.P. Jal Nigam and Another Vs. Jaswant

Singh and Another, , Subhash Kumar Lata Vs. R.C. Chhiba and Another, Shri Chaman Singh and Another Vs. Srimathi Jaikaur, , Keshavlal

Jethalal Shah Vs. Mohanlal Bhagwandas and Another, 6 and Commissioner of Income Tax, Bombay etc. Vs. M/s. Podar Cement Pvt. Ltd. etc., .

14. The learned Government Pleader for Social Welfare appearing for the respondents 1 to 3 adopted the submissions of the learned counsel for

the 4th respondent.

15. I have noted the submissions of both sides.

16. In the light of the above pleadings and contentions of the parties, the following points arise for consideration:

(a) Whether proceedings initiated by the mother of the 4th respondent in 1981 impugning the transaction under the sale deed dt. 08-08-1963

executed by her husband Pottaiah in favor of Singayya and the consequent transfer by Singayya in favor of the petitioner are barred by limitation?

(b) Whether the respondent nos. 1 to 3 are entitled to ignore G.O. Ms. No. 2285 Education dt. 15-11-1967 issued by 1st respondent granting

permission u/s 3(1)(ii) of Regulation 1 of 1959 permitting transfer of the subject land by Singayya in favor of the petitioner and to go into validity of

the sale deed dt. 08-08-1963 executed by Pottaiah in favor of Singayya?

(c) Whether the authorities under the Act were entitled to declare the sale deed dt. 08-08-1963 between Pottaiah, a tribal and Singayya, a tribal,

as a benami transaction for the benefit of the petitioner?

(d) Whether the orders passed by respondents 1 to 3 are sustainable in law?

17. Before answering the above issues, the basic facts may be noted. The subject land was admittedly belonging to a tribal and he sold it in favor

of Kowasu Parvathamma, also a tribal, under a registered sale deed dt. 31-10-1938. On her death, her son Kowasu Pottaiah, a tribal, sold the

land in favor of Singayya (a tribal), under registered sale deed dt. 08-08-1963. Thereafter permission was granted by 1st respondent under G.O.

Ms. No. 2285 Education dt. 15-11-1967 for alienation by Singayya to the petitioner, a non-tribal, in exercise of power u/s 3(1)(ii) of Regulation 1

of 1959 (as it stood prior to its amendment by Regulation 1 of 1970). Subsequently a registered sale deed dt. 06-02-1967 was executed by

Singayya in favor of petitioner.

18. As these transactions have taken place prior to the amendment of Regulation 1 of 1959 by Regulation 1 of 1970, the pre-existing/un-amended

Regulation 1 of 1959 only would apply to the facts of the case. The said provision is extracted hereunder:

3(1). Notwithstanding anything contained in any enactment, rule or law in force in the Agency Tracts, any transfer of immovable proper 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-

(1) in favor of any other member of a Scheduled Tribe or a registered Society as defined in clause (f) of Section 2 of the Madras Co-operative

Societies Act, 1932 (Madras Act VI of 1932), composed solely of members of the Scheduled Tribes, or

(ii) with the previous sanction of the State Government, or subject to rules made in this behalf with the previous consent in writing of the Agent or

of any prescribed officer.

(2) (a) Where a transfer of immovable property is made in contravention of subsection (1), the Agent, the Agency Divisional Officer or any other

prescribed officer may, on application by any one interested, or on information given in writing by a public servant, or suo motu decree ejectment

against any person in possession of the property claiming under the transfer after due notice to him in the manner prescribed and may restore it to

the transferor or his heirs.

(b) If the transferor or his heirs are not willing to take back the property or where their whereabouts are not known, the Agent the Agency

Divisional Officer or prescribed officer, as the case may be, may order the assignment of sale of the property to any other member of a Scheduled

Tribe or a registered Society as defined in clause (f) of Section 2 of the Madras Co-operative Societies Act, 1932 (Madras Act VI of 1932)

composed solely of members of the Scheduled Tribes, or otherwise dispose of it, as if it was a property at the disposal of the State.

The said provisions make the transfer of immovable property from a tribal to a non-tribal null and void. Sub-section (2) of Section 3 empowers the

Agent, the Agency Divisional Officer or any other prescribed Officer, on an application by any interested person, relied on information given in

writing by a public servant or suo motu decree ejectment of the person in possession of the property claiming under the transfer, after prescribed

notice etc. and may restore the property to the transferor or his heirs, If the transferor or his heirs are not willing to take back the property or their

whereabouts are not known, the Agent, Agency Divisional Officer or the Prescribed Officer, as the case may be, may order assignment or sale of

the property to any other member of a schedule tribe. Therefore, by virtue of the provisions of Regulation I of 1959 any transfer made by a tribal

to a non-tribal is made null and void and the authorities were empowered to restore possession of the said property, after ejecting the person in

possession under the void transfer to the transferor or his heirs and if their whereabouts are not known, the authorities are empowered to order

assignment or sale of the property to any member of a scheduled tribe.

19. Regulation 1 of 1970, amended Regulation 1 of 1959 and came into effect from 03-02-1970. Section 3 as amended by Regulation 1 of 1970

states:

3. Transfer of immovable property by a member of a Scheduled Tribe:-

(1) (a) Notwithstanding anything in any enactment, rule or law in force in the Agency tracts any transfer or immovable property situated in the

Agency tracts by Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favor of 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) Until the contrary is proved, any immovable property situated in the Agency tracts and in the possession of a person who is not a member of

Scheduled Tribe, shall be presumed to have been acquired by person or his presumed to have been acquired by person or his predecessor in

possession through transfer made to him by a member of a Scheduled Tribe.

(c). Where a person intending to sell his land is not able to effect such sale, by reason of the fact that no member of a Scheduled Tribe is willing to

purchase the land or is willing to purchase the land on the terms offered by such person, then such person may apply to the Agency, the Agency

Divisional Officer or any other prescribed officer of the acquisition of such land by the State Government, and the Agent. Agency Divisional Officer

or the prescribed officer, as the case may be, may by order, take over such land on payment of compensation in accordance with the principles

specified in Section 10 of the Andhra Pradesh Ceiling on Agricultural Holding Act, 1961 (Act X of 1961), and such land shall thereupon vest in

the State government free from all encumbrances and shall be disposed of in favor of members of the Scheduled Tribes or a society registered or

deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964) composed solely of members of the

Scheduled Tribes or in such other manner and subject to such conditions as may be prescribed];

2)(a) Where a transfer of immovable property is made in contravention of sub-section (1), the Agent, the Officer or any other prescribed Officer

may, on application by any one interested, or on information given in writing by a public servant, or suo motu decree ejectment against any person

in possession of the property claiming under the transfer, after due notice to him in the manner prescribed and may restore it to the transfer or his

heirs.

(b). If the transferor or his heirs are not willing to take back the property or where their whereabouts are not known, the Agent, the Agency

Divisional Officer prescribed officer, as the case may be, may order the assignment or sale of the property to any other member of a Scheduled

Tribe 1 [or a society registered or deemed to be registered under any law relating to Co-operative Societies for the time being in force in the State]

composed solely of members of the Scheduled Tribes, or otherwise dispose of it, as if it was a property at the disposal of State Government.

(3)(a) Subject to such conditions as may be prescribed, an appeal against any decree or order under sub-section (2), shall lie within such times as

may be prescribed-

(i) if the decree or order was passed by the Agent, to the State Government;

(ii) if the decree or order was passed by the Agency Divisional Officer, to the Agent; and

(iii) if the decree or order was passed by any other officer, to the Agency Divisional Officer or Agent, as may be prescribed.

(b) The appellate authority may entertain an appeal on sufficient causes being shown after the expiry of the time limit prescribed therefore.

[(4) For the purposes of this section, the expression "transfer" includes a sale in execution of a decree and also a transfer made by a member of a

Scheduled Tribe in favor of any other member of a Scheduled Tribe benami for the benefit of a person who is not a member of a Scheduled Tribe;

but does not include a partition or a devolution by succession].

20. In Gaddam Narsa Reddy and Others Vs. Collector, Adilabad District and Others, a Full Bench of this Court has held that Section 3(1) of

Regulation 1 of 1959 and its amendments by Regulations 2 of 1963 and 1 of 1970 have no retrospective operation and do not effect transfers

made prior to the said Regulation or prior to the amendments to the said Regulation coming into force. This decision was followed in K.

Mahalaxmi (4 supra).

21. Gaddam Narsa Reddy (16 supra) has been upheld by the Supreme Court in S. Venkata Ramanaiah (5 supra). After advertent to the provision

of Regulation 1 of 1959 and the amendment thereto by Regulation 1 of 1970, the Supreme Court held:

21...It may be noted that the words "whether or not such person is a member of a Scheduled Tribe" as found in Section 3(1)(a) were inserted by

Regulation I of 1970 meaning thereby prior to the amending Regulation coming into force Section 3(1)(a) hit transfers of immovable property

situated in agency tracts by only a member of a scheduled tribe and if such transfer was made by a non-tribal such transaction was outside the

sweep of Section 3(1)(a). A close reading of Section 3(1)(a) indicates that after coming into force of the said provision any transfer of immovable

property which is in the sweep of Section 3(1)(a) would be absolutely null and void unless the transfer falls within the excluded category as

mentioned in the said provision. This Section nowhere indicates either expressly or even impliedly that it is meant to adversely affect completed

transactions of transfer which might have taken place prior to the coming into force of Section 3(1)(a) of the Regulation. Mrs. Amareshwari, learned

senior counsel could not effectively urge that there was any such express indication of retrospectivity in the said provision or any other part of the

Regulation. It is obvious that if Section 3(1)(a) was to apply retrospectively to hit even past transfers it would have mentioned with reference to

transfer of immovable property as under:

Whether effected before or after coming into operation of this Regulation.

Such or similar words are conspicuously absent. Therefore, Section 3(1)(a) as it stands cannot be said to have any express retrospective effect. In

this connection we may also mention one submission canvassed by learned senior counsel for the authorities. She contended that Section 3 Sub-

section (1)(b) indicates such a retrospective effect, The said provision which is noted earlier reads as under:

3(1)(b). Until the contrary is proved, any immovable property situated in the Agency tracts and in the possession of a person who is not a member

of a Scheduled Tribe, shall be presumed to have been acquired by such person or his predecessor in possession through a transfer made to him by

a member of a Scheduled Tribe.

It is difficult to appreciate how this provision can be of any assistance to the learned senior counsel, for urging any retrospective operation of

Section 3. Section 3(1)(b) enacts a rule of evidence which may be pressed in service in a properly constituted enquiry in cases where the main

provision of Section 3(1)(a) gets attracted meaning thereby if in connection with any transfers of immovable property situated in Agency tracts

effected after the coming into operation of Section 3(1)(a), a question arises whether the transfer was made by a transferor who was a member of

a Scheduled Tribe and if it is shown that such transferred land was in possession of a non-tribal, a rebuttable presumption would arise u/s 3(1)(b)

that such transferor was a member of Scheduled Tribe. This provision has nothing to do with any retrospective effect of Section 3(1)(a) itself not

does it even remotely indicate that because of the rule of evidence enacted in Section 3(1)(b), even prior completed transfers would also be

covered by the sweep of Section 3(1)(a).

22. Ambati Obi Reddy (3 supra) and Yandapu Satyavati (6 supra) followed the above decision.

23. In Javvadi Samba Murthy (1 supra), relied upon by the petitioner, it was held that authorities under the Scheduled Areas Land Transfer

Regulation 1 of 1959 are not entitled to evict a person who secured a patta under the A.P. Muttas Abolition Regulation, 1969 in view of Section

34 of the said Regulation which gave it overriding effect over the provisions of any other laws inconsistent therewith. The said decision is

inapplicable to the present case, since here there is no order passed under any other enactment such as A.P. Muttas Abolition Regulation, 1969

upholding the right of the petitioner to continue in the possession of the land.

24. In Gadde Nagabhushanamma (2 supra), this Court held that an order of Special Deputy Collector declaring a transfer of land in scheduled

area to a person other than one belonging to a Scheduled Tribe as void, is not liable to be questioned on the ground that a patta has been granted

to the transferee by the Director of Settlements under the provisions of Regulation 2 of 1970 (i.e., The Andhra Pradesh Scheduled Areas Ryotwari

Settlement Regulation, 1970). It was also held in the said decision that the provisions of Regulation 2 of 1970 require the authorities thereunder to

ensure grant of ryotwari patta consistent with provisions of Regulation 1 of 1959. This decision is also in-applicable to the facts of the present case

as there is no patta granted to petitioner under Regulation 2 of 1970.

25. In Datla Narasimha Raju (7 supra), it was held that an order passed in proceedings initiated u/s 3 of the Regulation cannot be renewed or

reopened subsequently and any modification of such an order would be illegal and without jurisdiction. Such is not the case here. Therefore, the

said decision has no application.

26. In K. Mahalaxmi (4 supra) it was held that suo motu proceedings cannot be initiated afresh 15 years after primary authority under the

Regulation had rejected the application filed by a tribal to evict a non-tribal in 1973, at the instance of the son of the tribal, and that the latter

proceedings would be barred by res-judicata.

27. Where a sale took place of tribal land after obtaining permission from the competent authority under the Regulation and subsequently a patta

under Regulation 2 of 1970 was also issued, in Pandi Ramulu (8 supra) it was held that possession of the petitioner/non-tribal under the said patta

cannot be said to be unlawful.

28. These three decisions also have no application to the facts of the present case in view of the facts stated therein.

29. Although the learned counsel for 4th respondent sought to contend that sub-Section (4) of Section 3 inserted in Regulation 1 of 1959 by

Regulation 1 of 1970 has retrospective operation as it is merely clarifying Regulation 1 of 1959, I am unable to accept the said contention. This is

because the fiction created by sub-Section (4) of Section 3 introduced by Regulation 1 of 1970 is only "for the purposes of this Section" i.e. to the

amended Section 3 inserted by Regulation 1 of 1970. So it cannot be said to have retrospective operation and apply to situation prior to 3.2.1970

when Regulation 1/1959 was amended by regulation 1/1970. Also in S. Venkata Ramanaiah (5 supra), the Supreme Court categorically held that

past transactions remained untouched by the sweep of amendment to regulation 1/1959 by Regulation 2 of 1963 or Regulation 1 of 1970. It held

that transfers in cases which were affected years back, prior to the coming into force of Regulations in question, could not be covered by them.

Point (a):-

30. Section 7 of the Regulation 1 of 1959 states as follows:

7. Provisions of Limitation Act to apply to proceedings under this Regulation:-

The provisions of the Indian Limitation Act, 1908 (Central Act IX of 1908), shall, in so far as they are not inconsistent with the provisions of this

Regulation or the rules made thereunder, apply to proceedings under this Regulation.

31. Placing reliance on this provision, the learned counsel for the petitioner contended that the provisions of the Limitation Act, 1908 would apply

to proceedings under this Regulation and that the proceedings initiated against the petitioner in 1980, by the mother of the 4th respondent to

dispossess the petitioner, who had purchased the property under registered sale deed dt. 06-12-1967, are barred by limitation and they ought to

have been initiated within three years from the execution of the sale deed in view of Article 181 of the Limitation Act, 1908 corresponding to

Article 137 of the Limitation Act, 1963.

32. The applicability of the provisions of the Limitation Act to proceedings initiated by authorities under the Regulation No. 1/1959 was considered

by a Division Bench of this Court in Manikyam Basavaraju and Another Vs. Thurram Naganna Dora and Others ILR 1969 AP 1083. It held:

...We shall now consider the contention whether the Limitation Act is applicable to these applications.

The provisions of the Act and the Regulation already referred to empower only the Agent or the Agency Divisional Officer or other prescribed

Officer to decree ejectment and restore possession to the transferor in the case of transfers forbidden by them. Having regard to the above

statutory provisions and the clear distinction made in the appellation given to the officers in the Scheduled Districts according as they discharge

powers of civil Courts, or discharge other powers in the conduct of the administration, it must be held that they are exercising jurisdiction in respect

of the applications for ejectment as *persona designata*. It is not possible to accept the contention of Sri Ananta Babu that the Agent, or the Agency

Divisional Officer or other prescribed officer exercising the powers u/s 4 of the Act or Section 3 of the Regulation, is functioning as a civil Court

under the Agency Rules, and consequently that all the provisions of the Limitation Act are attracted to the applications thereunder.

...This decision ((1929) 56 M.L.J. 383) is clear authority for the position that an application u/s 4 of the Act is not a suit. We adopt this judgment

and hold that the application u/s 3 of the Regulation, for the very same reasons, is not a suit, and the order therein is not a decree.

The Limitation Act, as the preamble itself indicates, provides the law relating to limitation of suits, appeals and certain application to courts, but not

tribunals. As pointed out by the Privy Council in *Hansraj v. Official Liquidator* (1982) ILR 54 All. 1067, the word ""suit"" ordinarily means and apart

from some context must be taken to mean, a civil proceeding instituted by the presentation of a plaint it was pointed out in that case that a mere

claim against a company in liquidation, not accompanied by a proceeding instituted by the presentation of a plaint, cannot be considered to be a

suit instituted"".

...We shall not consider whether having regard to the provisions of sections 3 and 7 of the Regulation, section 28 of the Limitation Act is attracted

to the application for ejectment.

The contention of Sri Ananta Babu in this context may be stated thus:- Section 7 of the Regulation enacts that the provisions of the Indian

Limitation Act, 1908, shall in so far as they are not inconsistent with the provisions of this Regulation or the Rules made thereunder, apply to

proceedings under this Regulation. Section 3(2)(a) contemplates an application to be filed in the manner prescribed, and Section 3(2)(b) enacts

that subject to such conditions as may be prescribed an appeal against any decree or order under sub-section 2 shall lie within such time as may be

prescribed, and section 3(3)(b) that the appellate authority may entertain an appeal after the expiry of the time limit prescribed therefor on sufficient

cause being shown therefor. We are however told that, though the Regulation contemplates Rules being made with regard to the limitation for

appeals as well as for other purposes, u/s 8 no such Rules have been made so far. The learned counsel submits that inasmuch as section 3(3)(b) of

the Regulation contemplates a period of limitation being prescribed for appeals, and the power u/s 5 of the Limitation Act is conferred on the

appeals, tribunals to condone the delay in filing the appeal it must be assumed and as section (3) has not prescribed for periods of limitation

inconsistent with the Limitation Act, all its provisions, including section 28 apply.

We are unable to accept this contention. As already noticed. section 3(3)(a) expressly provides for a period of limitation being prescribed only for

appeals. It does not contemplate any period of limitation being prescribed for applications, which necessarily implies that no period of limitation

was intended to be prescribed for applications. Further the words ""in the manner prescribed"" in section 3(2)(a) refer to notice to the person sought

to be ejected but not the application, and therefore, those words cannot be construed as a period of limitation intended to be prescribed for the

application. There is yet another reason for this conclusion. As already noticed, the Agent, Agency Divisional Officer or any other prescribed

officer may, on an application, or on information by a public servant, or suo motu, decree possession and order restoration of possession for the

obvious reason the tribals could not be trusted to safeguard their rights, like the other citizens and had to be protected against themselves. That is

why no period of limitation by an application by any one interested. But after the filing of an application and a decree for ejection or order of

restoration being passed, the regulation contemplated a period of limitation being prescribed for appeals, and even then empowering the appellate

authority to condone the delay in filing it. On a harmonious interpretation of all the provisions of the Regulation and in view of the foregoing

discussion, we hold that no period of limitation is prescribed for an application u/s 3(2)(a) of the Regulation.

33. In view of the above authoritative pronouncement of this Court, I have no hesitation to hold that an application u/s 3 of Regulation 1 of 1959 is

not a suit; that Limitation Act, 1908 only applies to suits, appeals and certain applications to Courts but not Tribunals like the authorities constituted

under the Regulation; Section 3(3)(a) expressly provides the period of limitation prescribed only for appeals and the Regulation did not

contemplate any period of limitation prescribed for applications. Therefore no period of limitation was intended to be prescribed for applications

since tribals cannot be trusted to safeguard their own rights like other citizens and had to be protected. Only in respect of appeals filed u/S. 3(3)

(a), Section 7 of the Regulation would make applicable provisions of Limitation Act, 1908 and the law of limitation did not apply for applications

made to primary authority under the Regulation for eviction of non-tribals. I have therefore no hesitation to reject the contention of the learned

counsel for petitioner that the application by mother of 4th respondent before 3rd respondent for eviction of petitioner is barred by the law of

limitation.

34. I am also of the view that this Court, in its order dt. 28-02-2002 in the W.A. No. 1341 of 1997, had not decided that provisions of Indian

Limitation Act, 1908 apply to all proceedings under the Regulation. It merely recorded that the petitioner has raised such a contention and that her

contention relating to limitation with reference to Section 7 of Regulation 1 of 1959 is also required to be considered by the 1st respondent as it

goes to the route of the matter.

Point No. (b) and (c):

35. It is the contention of the learned counsel for petitioner that 1st respondent had permitted the alienation in favor of petitioner vide G.O. Ms.

No. 2285 Education Department, dt. 15-11-1967, that respondent nos. 2 and 3, being subordinate in hierarchy to the 1st respondent, are bound

to give affect to the said decision of 1st respondent and are not entitled to go into the validity of the transaction under the registered sale deed dt.

08-08-1963 between Pottaiah and Singayya and set aside the alienation in favor of the petitioner under registered sale deed dt. 06-12-1967 by

Singayya.

36. The learned counsel for 4th respondent however contended that the respondent nos. 1 to 3 are enjoined by Regulation 1 of 1959 to decide

whether a transaction (sale deed dt. 08-08-1963) which purports to be between a tribal (Pottaiah) and another tribal (Singayya) is in reality such a

transaction or not and that if it is found to be in fact a transaction between a tribal (Pottaiah) and a non tribal (petitioner), and was obtained by a

devise to circumvent the prohibition contained in the Regulation, then notwithstanding the said G.O., they can cancel the said transaction.

37. It is not in dispute that prior to 1970, it was permissible for a transfer to be made by a tribal to non-tribal and such a transfer would be valid

only if it is done with the previous sanction of the State Government subject to Rules made in that behalf or with the previous consent in writing of

the Agent or of any prescribed officer [Section 3(1)(ii)]. In my view, the language of Regulation 1/1959 (prior to amendment by regulation 1/1970)

empowers the competent authority to go into the issue whether a transaction which apparently is between a tribal and another tribal is in reality

such a transaction or not. If the real nature of the transaction is found to be one between a tribal and non-tribal on the basis of material placed on

record, it is the bounden duty of the competent authority to take steps to evict the non-tribal by ignoring the transaction. Else, there is a possibility

of non-tribals circumventing the provisions of the Regulation by purchasing property in the name of a tribal benami and circumventing the

mandatory provisions of the Act regulating sales between tribals and non-tribals. Regulation 3 has thus to be interpreted as conferring a power

coupled with a duty to take action on the competent authority, if such fraud is being perpetrated to defeat the purposes of the Regulation.

38. The concurrent findings of fact by the respondent nos. 2 and 3 are that Singayya is none other than the farm servant of the petitioner; that he

was not having sufficient economic capacity to purchase the schedule lands in the year 1963; and that there was no necessity for Singayya, a poor

tribal, to buy land which is also not fertile, that too at a distance of 10 kilometers from his place of residence. It was also found that the husband of

the petitioner was the Village Munsif of Kannapuram village and Singayya was rewarded by grant of some other land of Ac. 3.00 cents by

petitioner through her relative for having lent his name as a benamidar under the document dt. 08-08-1963. They concurrently found that the real

purchaser under the said sale deed is the petitioner and Singayya was only her benamidar. Thus the transaction was found in reality to be a

transaction between Pottiah (a tribal) and the petitioner (a non-tribal).

39. There was admittedly no previous sanction of the State Government or of the Agent for the said transaction dt. 08-08-1963 as mandated by

Section 3(1)(ii) of the Regulation 1/1959 prior to amendment in 1970. So it is a void transaction. If the said transaction is a void transaction, the

ownership of the schedule lands continued to be with Pottaiah. Even if there is a permission by the State Government for a transfer from Singayya

to petitioner under GO. Ms. No. 2285 Education Department dt. 15-11-1967, since the title to the property continued to be with Pottaiah only

and did not pass to Singayya, he could not have conveyed any right, title or interest to the petitioner in respect of the subject land. So I am of the

view that GO. Ms. No. 2285, Education Department dt. 15-11-1967 did not come in the way of respondent nos. 1-3 in going into the validity of

a transaction dt. 08-08-1963. Therefore this point is also held against petitioner.

Point No. (d):

40. Having considered the orders dt. 31-08-1981 in S.R. No. 219 of 1980 of 3rd respondent and the order dt. 15-01-1982 in S.R.A. No. 37 of

1981 of 2nd respondent, I am of the opinion that they have carefully considered the evidence on record to arrive at the conclusion that Singayya is

only a benamidar for the petitioner in the sale transaction dt. 08-08-1963 under which Pottaiah executed the sale deed in favor of Singayya.

Although the counsel for the petitioner sought to impugn the correctness of the findings recorded by respondents 2 and 3 in this behalf, I am of the

opinion that the said findings are based on the appreciation of evidence on record and cannot be said to be perverse or rendered by ignoring

material evidence. The said findings were also rightly accepted by the 1st respondent in the impugned order. Therefore, in exercise of jurisdiction

under Art. 226 of Constitution of India, they are not liable to be interfered with by this Court.

41. The conduct of the petitioner as evidenced by the material on record indicates that the petitioner has secured possession of the subject lands in

violation of the provision of the Regulation 1 of 1959. Since the transaction of 1963 was void in law, the subsequent Government Order of 1967

cannot sanctify it and validate it. It would be ironical to permit the petitioner to rely upon the Regulation 1 of 1959 to retain possession since in

violation of it, she had obtained the land.

42. Article 46 of the Constitution of India states:

Article 46:- Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections The State shall

promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes

and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

43. The Regulation is intended to give effect to the above directive principle of State Policy enshrined in the Constitution. Exercise of jurisdiction by

this Court in favor of the petitioner, in the facts and circumstances of the case, would not only defeat the interest of justice but would enable the

petitioner to secure a dishonest advantage and perpetuate an unjust claim. It is the duty of this Court as a Court of equity, when exercising

jurisdiction under Article 226 of the Constitution to act so as to prevent the perpetration of fraud of the kind discovered in this case and to

promote good faith and equity. Therefore, I am of the view that it is not proper for this Court to grant the petitioner any relief. In the result, the writ

petition is dismissed and the orders of eviction passed against the petitioner by respondent nos. 1 to 3 are upheld. No costs.