(2014) 04 AP CK 0100

Andhra Pradesh High Court

Case No: Writ Petition Nos. 15688 of 2011 and 19085 of 2013

Mandava Rama Krishna and seven Others		APPELLANT
	Vs	
State of Andhra Pradesh and eight Others		RESPONDENT

Date of Decision: April 17, 2014

Acts Referred:

- Andhra Pradesh Panchayat Raj Act, 1994 - Section 242D
- Constitution of India, 1950 - Article 14, 141, 2, 21, 226
- General Clauses Act, 1897 - Section 24, 3(29)
- Government of India Act, 1935 - Section 91, 91(1), 91(2), 92, 92(1)
- States Reorganisation Act, 1956 - Section 120

Citation: (2014) 5 ALD 181

Hon'ble Judges: Ramesh Ranganathan, J

Bench: Single Bench

Advocate: S. Ramachandra Rao, Senior Counsel for Sri K.R. Prabhakar, Advocate for the Appellant; J. Ramachandra Rao and Sri J. Satyaprasad, Learned Counsel appearing on behalf of the unofficial respondents, Advocate for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Ramesh Ranganathan, J.
The action of the respondents, in treating Mangapet Mandal, Warangal District as a "Scheduled Area", and in reserving all offices of Gram panchayats therein in favour of the Scheduled Tribes, is questioned in these Writ Petitions as being arbitrary, illegal, in violation of Articles 14, 21 and Para 6(1) of Schedule V to the Constitution of India, and as contrary to the judgment of this Court in W.P. No. 1413 of 1973 dated 30.11.1973.

2. It is the petitioners'' case that Mangapet mandal consists of 23 revenue villages and 80 Gram panchayats which were not declared as "Scheduled Areas" by the President of India under Para 6(1) of the V Schedule to the Constitution; the respondent authorities had reserved the offices of local bodies, in the said villages and Gram Panchayats, in favour of the scheduled tribes in the elections conducted in the year 2006; the validity thereof was challenged in W.P. No. 14068 of 2006 wherein an interim order was passed staying the election notification; subsequently W.P. No. 14068 of 2006 was dismissed by order dated 03.08.2006, on technical grounds; some of the villagers of Mangapet mandal were earlier issued notices under Regulation 1 of 1970; W.P. No. 1413 of 1973, filed by them to restrain the respondents from applying the A.P. Land Transfer Regulation, 1959 as amended in the A.P. Scheduled Areas Land Transfer (Amendment) Regulation, 1970 to their immovable properties situated in the said villages, was allowed by this Court by order dated 13.11.1973 holding that the villages, in which the petitioners therein owned lands, were not notified in the Presidential order; W.A. No. 486 of 1974, filed there against, was dismissed on 08.07.1974; from 1959 to 2006, all local body offices in Mangapet mandal were open to the general category, subject to reservation by rotation; the Nizam of Hyderabad State, by notification dated 21.04.1950, divided Hyderabad State into 16 Districts; thereby all the 23 villages, now in Mangapet Mandal, were deleted from Palvancha Taluq, and included in Mulug Taluq; the President of India issued notification dated 07.12.1950, under Para 6(1) of the V Schedule to the Constitution, excluding these 23 villages in Mulug Taluq from the list of Scheduled Areas; all the 23 villages in Mangapet Mandal were in Mulug Taluq on the date of issuance of the Presidential order dated 07.12.1950; while specifying other villages in Mulug Taluq as "Scheduled Areas", these 23 villages were not notified as such in the Presidential Order; the action of the respondents in treating these villages as "Scheduled Areas", and in reserving local body offices in favour of the scheduled tribes, is ex facie illegal, arbitrary and in violation of Articles 14 and 21 of the Constitution of India; the right to participate in the elections, and the right to elect, is a statutory right which cannot be denied to the non-tribals; and the power to declare an area, as a "Schedule Area", is a constitutional power vested in the President of India, and cannot be exercised by any of the respondent authorities.

3. In the counter-affidavit, filed on behalf of respondents 3 to 5 in W.P. No. 19085 of 2013, it is stated that Mangapet mandal consists of 23 revenue villages which are organised into 18 Gram Panchayats; the Tribal Area Regulation, 1359 fasli was enacted for administration of the tribal areas in the erstwhile State of Hyderabad; notification dated 16.11.1949 was issued declaring the tribal areas in the State of Hyderabad; the last entry of Warangal District records the villages of Taluq and Samasthan of Palvancha as tribal areas, with the exception of Palvancha, Borgamphad, Ashwaraopeta, Dammapeta, Kaknur and Nellipak villages; as a result all the subject 23 villages, which were then in Palvancha Taluq, became part of the tribal areas in the erstwhile State of Hyderabad; in view of Article 372 of the

Constitution of India areas, which were notified by the Government of Hyderabad as tribal areas, continue to remain as such; no order, specifically rescinding the tribal area status of the subject 23 villages, has been passed even as on date; the list published by the Government of Hyderabad, in its notification dated 16.11.1949, formed the basis of the Presidential order dated 07.12.1950; no executive order, or instructions, can be issued overriding the Presidential Order; the Government of Hyderabad exercised powers, u/s 5 of the Hyderabad Land Revenue Act 1317 fasli, and issued notification dated 21.04.1950 for re-organisation of Taluqs; the said notification came into force from 06.05.1950; by this notification the subject 23 villages, which now form part of the Mangapet Mandal, were separated from Palvancha Taluq and clubbed with Mulug Taluq of Warangal District; the notification dated 21.04.1950 is limited to the determination of boundaries of the respective Taluqs, and identification of the villages included in it; the mere fact that a particular set of villages were removed from one Taluq, and merged with another, would not result in their cessation as notified tribal areas; when these 23 villages were clubbed into Mulug Taluq from 06.05.1950, they were still tribal area villages; simple alteration of boundaries of a territorial division cannot alter the tribal area status of these villages; the tribals of Mangapet Taluq have been deprived of the benefits and protection given to "Scheduled Areas"; their lands are not protected from alienation because of non-application of the Land Transfer Regulations; over a period of time areas, which hitherto were inhabited primarily by the scheduled tribes, have been encroached upon by non-tribals; the intention behind issuance of the notification dated 16.11.1949 declaring these 23 villages as tribal areas, and the action of the respondents in treating these 23 villages as "Scheduled Areas" is not in violation of the Constitution of India; it is merely an attempt to rectify a wrong, perpetuated all these years, robbing the scheduled tribes living in these 23 villages of the protection which they are entitled to; the respondents have merely implemented the Presidential order dated 07.12.1950; the District Election authority, vide letter dated 25.06.2013, had reserved the offices of Sarpanches in Mangapet Mandal treating them as "Scheduled Areas" in view of the Presidential Order dated 07.12.1950; and the petitioners have no legal right to stop the election process as the constitutional rights of the scheduled tribes would be adversely affected thereby.

4. In the counter-affidavit, filed on behalf of the 7th respondent in W.P. No. 15688 of 2011, it is stated that this Court, while deciding W.P. No. 1413 of 1973, was unaware of the notification issued by the Government of Hyderabad dated 16.11.1949; Section 242D of the Andhra Pradesh Panchayat Raj Act, 1994 requires offices of Presidents of Gram Panchayats, in Scheduled Areas, to be reserved in favour of the scheduled tribes; since the subject 18 Gram Panchayats, comprising of 23 revenue villages, were declared as "Scheduled Areas" in the notification issued by the President of India dated 07.12.1950, the local body offices in the subject Gram Panchayats are required to be reserved in favour of the scheduled tribes; Warangal District hitherto comprised of 8 taluqs, including Mulug and Paloncha; Paloncha

taluq was sub-divided into five zones comprising 227 villages including the subject 23 villages; Hyderabad State issued the notification dated 16.11.1949, under the Tribal Areas Regulation, 1359 Fasli, wherein all the villages forming part of Paloncha taluq of Warangal District, except Paloncha, Borgampad, Ashwaraopet, Dammapet, Kuknur and Nelipak villages, were declared as tribal areas; thereafter, for the purpose of collection of land revenue and for better administration, the Government of Hyderabad had issued notification dated 21.04.1950, u/s 5 of the Hyderabad Land Revenue Act (No. 8 of 1317 Fasli, reorganising the taluqs and forming Girdwar Circle in Warangal District; all the 23 villages, which formed part of Paloncha taluq, were shown in Girdwar Circle, Mangapet; all the villages in the Mangapet mandal were treated as "Scheduled Areas" and offices, of local bodies therein, were reserved in favour of the scheduled tribes, in the 2006 elections; even though the said action was challenged before this Court, elections were directed to be held; merely because local body offices were not reserved earlier, in favour of the scheduled tribes, would not confer any right on the petitioners to claim that these villages are non-Scheduled Areas; the President had declared the 23 villages of Mangapet Mandal, which were then in Paloncha Taluq of Warangal District, as "Scheduled Areas" in the Scheduled Areas (Part B States) Order dated 07.12.1950; as none of these facts were brought to the notice of this Court, when the order was passed in W.P. No. 1413 of 1973, the said judgment does not constitute a precedent; the Chief Executive Officer, Zilla Praja Parishad, Warangal had submitted particulars informing that these 23 villages of Mangapet Mandal are located wholly in Scheduled Areas; the 23 villages, which are now in Mangapet Mandal, were originally part of Paloncha taluq of Warangal District; the erstwhile Hyderabad Government had sent proposals to the Government of India, for issuing the Presidential Notification under Para 6(1) of the V Schedule to the Constitution, to declare these 23 villages also as "Scheduled Areas" in Paloncha taluq, when the entire Paloncha Samsthan and taluq were then in Warangal District; in the meanwhile, due to abolition of Jagirs, taluqs were re-organized by way of the notification dated 21.04.1950 published in the Hyderabad Extraordinary Gazette No. 47 dated 23.04.1950; as a result the 23 Samsthan villages, which were hitherto part of Paloncha taluq, were tagged to Mangapet Circle of Mulug Taluq in Warangal District on the ground of administrative convenience, before formation of Khammam District (Khammam District was formed in the year 1953 by Notification dated 18.09.1953); the "Scheduled Areas (Part-B States) Order, 1950" was issued solely on the basis of the proposals sent much earlier by the erstwhile Hyderabad Government; the 23 villages, which figured under Paloncha Samsthan (Paloncha Taluq), were notified as scheduled villages under Item 13 of the Presidential Order; as these villages, figured under Paloncha Samsthan (Paloncha taluq), its status would not change merely because these villages had, in the interregnum, been tagged on to Mulug taluq; the list of villages, both in the Presidential Order dated 07.12.1950, and the notification dated 16.11.1949 issued under the Tribal Area Regulations 1359 Fasli, are the same; and even the names of the villages appear in the same order in both the lists. The

counter-affidavit gives a comparative chart of the two lists.

5. A similar counter-affidavit is filed by the 7th respondent in W.P. No. 19085 of 2013. It is also stated therein that, mere non-inclusion of these 23 villages of Mulug taluq in the Presidential Order dated 07.12.1950, would not mean that they automatically become non-scheduled areas as these villages were notified in Paloncha taluq; even after formation of State of Andhra Pradesh, till it was repealed by Regulation II of 1963 dated 01.12.1963, these areas were governed by the Tribal Area Regulation, 1359 Fasli and the Rules made thereunder; 227 villages of Paloncha taluq, including the subject 23 villages, are scheduled/tribal areas ever since 1949; in view of Section 4(g) of the A.P. Panchayat (Extension to the Scheduled Areas) Act, 1996, seats in panchayats, in the "Scheduled Areas", are required to be reserved in favour of the scheduled tribes; and the validity of Section 4(g) was upheld by the Supreme Court in Union of India (UOI) etc. Vs. Rakesh Kumar and Others etc., .

6. In the counter-affidavit, filed on behalf of the 9th respondent in W.P. No. 15688 of 2011, it is stated that Paloncha taluq of Warangal District comprised of 227 villages; at the time of formation of Khammam district on 01.10.1953, 23 of these 227 villages were in Mulug taluq of Warangal District, and the remaining 204 villages fell under Khammam district; and reserving all the 23 villages and 18 gram panchayats, of Mangapet Mandal in Mulug taluq of Warangal District, in favour of the scheduled tribes is in conformity with the Presidential Order dated 07.12.1950 made under Para 6(1) of the V Schedule to the Constitution of India.

7. A common reply affidavit is filed by the petitioners in W.P. No. 19085 of 2013. It is stated that the Government of the erstwhile State of Hyderabad had issued notification dated 21.04.1950 dividing Hyderabad State into 16 Districts, and notifying circles, villages and taluqs; under the notification dated 21.04.1950, Mangapet circle was in Mulug taluq and consisted of 23 villages; the 23 villages of Mangapet Mandal were not notified as "Scheduled Areas" in the Presidential Order dated 07.12.1950; this Court, by its order in W.P. No. 1413 of 1973 dated 30.11.1973, held that the 23 villages in Mangapet mandal were not "Scheduled Areas"; the said judgment was confirmed in W.A. No. 486 of 1974; that the Presidential Order did not notify these 23 villages as agency areas is evident from the proceedings of the District Collector dated 20.07.2000, 17.10.2000 and 07.12.2000; the Director of Tribal Welfare, Government of Andhra Pradesh, in his proceedings dated 05.12.2003, specifically mentioned that these 23 villages were not included in the list of agency areas; by the time the Scheduled Areas (Part B-States) Order was issued on 07.12.1950, the subject 23 villages were excluded from Paloncha taluq and included in Mulug Taluq of Warangal District by the notification dated 21.04.1950; these 23 villages cannot, therefore, be treated as Scheduled Areas in the absence of a Presidential notification; at the time of issuance of the Notification dated 16.11.1949, the 23 villages of Mangapet Mandal were in Paloncha taluq of Warangal District; they were subsequently deleted from Paloncha taluq, and included in Mulug taluq,

by notification dated 21.04.1950; certain villages in Mahabubnagar district were not notified as "Scheduled Areas" in the notification dated 16.11.1949; however the said villages, in Mahabubnagar District, were notified as Scheduled Areas by the Scheduled Areas (Part B States) Order, 1950; if the contention of the respondents were to be accepted, the villages of Mahabubnagar district could not have been notified as Scheduled Areas; the order of this Court, in W.P. No. 1413 of 1973 dated 30.11.1973, has been confirmed in W.A. No. 486 of 1974 dated 08.07.1974, and has attained finality; as this Court has held that the 23 villages of Mangapet mandal were not declared as "Scheduled Areas", by the Scheduled Areas (Part B States) Order, 1950, the respondents cannot now take a different stand at this length of time; the notification dated 16.11.1949 is not in existence as it was repealed by the Andhra Pradesh Scheduled Areas Laws (Extension and Amendment) Regulation, 1963; the contention that the Tribal Areas Regulation of 1949 is in existence and in force, by virtue of the provisions contained in Article 371 of the Constitution, is misconceived; as per Clause 3 of the Presidential Order, it is only the territorial divisions indicated therein which must be construed with reference to the territorial division of that name as existing at the commencement of the Order, but not otherwise; from the year 1950 till the year 2006, the 23 villages of Mangapet mandal were treated as non-Scheduled Areas; and, that apart, several of the respondent-authorities have observed that these 23 villages were not notified as Scheduled Areas.

8. Elaborate submissions, both oral and written, were made by Sri S. Ramachandra Rao, Learned Senior Counsel appearing on behalf of the petitioners, the Learned Additional Advocate-General appearing on behalf of the official respondents, and Sri J. Ramachandra Rao and Sri J. Satyaprasad, Learned Counsel appearing on behalf of the unofficial respondents.

I. Legislative Measures Taken to Protect the Scheduled Tribes Before Independence:

9. Before examining the rival contentions it is necessary to briefly refer to the legislative measures taken prior to the commencement of the Constitution of India on 26.01.1950, to protect the interests of the tribals. Ninety per cent of the Scheduled Tribes, predominantly, lived in forest areas and intractable terrains, 95 per cent of them were below the poverty line and totally dependent on agriculture or agriculture-based activities. Some of them eked out their livelihood as migrant construction labour on their displacement, from their hearth and home, for the so-called exploitation of minerals and construction of projects. In the past few centuries, Tribals have gradually been pushed back into the forests and hills by non-tribal settlers. The forests and hills provided a natural barrier and isolated the tribals from people living in the plains. Living in isolation, they developed their own society and allowed themselves to be governed by their own customary laws and rituals. These tribes, hitherto, adopted traditional shifting cultivation i.e., Podu or Jhoom, predominantly prevalent in Andhra Pradesh. Due to pressure on land

shifting cultivation was abandoned, and the tribes started settling down to cultivate crops in fixed holdings. (Samatha Vs. State of A.P. and Others, ; B. Shiva Rao''s Study Volume V of The Framing of India''s Constitution).

10. Within the "Scheduled Areas", of both Telangana and Andhra regions of the State of Andhra Pradesh, land was largely in the occupation of different Tribes. These areas were inaccessible tracts of land covered by forests and hills. The non-tribals, who arrived in these areas late in the 19th Century in certain areas, and the early 20th Century in certain others, found the tribals, who were in occupation of these lands, gullible. The non-tribals lent money to the tribals, taking the land belonging to them as security, though nothing was in writing. The rates of interest charged ranged between 25 to 50 per cent, and in certain cases even 100 per cent. The tribals, who were traditionally honest and simple in their thought and habits, were easy prey to these wily schemes. (P. Rami Reddy and Others Vs. State of Andhra Pradesh and Others, ; Vemana Somalamma and others Vs. Deputy Collector, Tribal Welfare, Rampachodavaram, E.G. Dist., and others,). A detailed study, of the exploitation of tribals, has been made by sociologists and anthropologists, notable among whom was Prof. C.V.F. Haimendorf. In "Tribes of India: The Struggle for Survival", Prof. Christoph von Furer-Haimendorf has, graphically, detailed the diverse methods by which tribals were deprived of their lands. The numerous forms and instances of exploitation became unbearable resulting in their rebellion. Inderelli (A. P.) police firing, in which hundreds of innocent tribals were killed, was one such event which depicted the enormity of their exploitation. The railway tracks and roads laid by the British, as means of transportation and communication, made the tribal areas accessible to the non-tribal immigrants who, with their limited means, came in large numbers in search of livelihood, settled down in these areas, and acquired large holdings exploiting the tribals. (Samatha Vs. State of A.P. and Others,). Prof. Haimendorf has explained how, notoriously, the migrants swelled in numbers in the agency/tribal areas of the Telangana region, dispossessed the tribals from their holdings with impunity, prevented them from exercising their rights over these lands, and unlawfully dispossessed them in collusion with the Patwaris, Deshmukhs or Deshpandes, the lower level local officials. The ill-treatment, and exploitation, of the tribals is one of the greatest tragedies of Indian history. (Samatha Vs. State of A.P. and Others,).

11. In the early nineteenth century, need was felt for special measures to be taken to protect the tribals. (Arka Vasanth Rao and others Vs. Govt. of A.P. and others,). As non-tribals, who were economically more powerful, had infiltrated into the agency/tribal tracts and were exploiting the tribals, it was felt, as early as in the year 1839, that the agency areas required special attention and special safeguards to protect the tribals from the people from the plains and, therefore, separate orders were issued, and laws made in that regard, from time to time. (Vemana Somalamma and others Vs. Deputy Collector, Tribal Welfare, Rampachodavaram, E.G. Dist., and others,).

12. Successive governments which ruled India, from the medieval to the British period, allowed tribals and aborigines to live in complete isolation and to follow their own tradition, culture, customs and faiths. The inherent dangers, in subjecting them to normal laws, necessitated their being governed by special laws. (Samatha Vs. State of A.P. and Others, ; B. Shiva Rao''s Study Volume V of The Framing of India''s Constitution). The beginning of British Rule in India saw the introduction of legislative measures excluding some areas totally, and some partially, from the governance of the Executive Council, and such powers of administration being entrusted to the Governor of the Province, and the Governor General/Viceroy, with special responsibilities. The "partially excluded areas" were subjected to dual control by the Executive with primacy being given to the Governor of the Province to apply, or to exclude application of, the laws made by the legislature or the Executive Council to these areas. The object was to protect tribals from the wiles of moneylenders; preserve their property; and provide them autonomy to follow their customs and culture. (Samatha Vs. State of A.P. and Others, ; The Framing of India''s Constitution, a study by B. Shiva Rao, (Vol. V): Chapter 20).

13. Prior to 1874, certain enactments were made for the administration of justice, and collection of revenue, in agency areas. As doubts arose, as to which Acts or Regulations were in force in different parts of British India, the Scheduled Districts Act (Act XIV of 1874) came to be passed. The said Act defined the term "Scheduled Districts" to mean the territories mentioned in the first schedule annexed thereto and to also include any other territory to which the Secretary of State for India, by resolution in Council, may declare. The Scheduled Districts Act specified a number of tracts as Scheduled Tracts, and power was given to the Local Government to declare, by notification, what enactments were not in force in any Scheduled Districts and to provide for extending by notification, to any Scheduled District with or without modification or restriction, any enactments in force in any part of British India. The First Schedule to the said Act listed several tracts in various States of British India and, in so far as the erstwhile composite State of Madras was concerned, the Scheduled Districts comprised certain agency tracts in Visakhapatnam and Godavari Districts. (Vemana Somalamma and others Vs. Deputy Collector, Tribal Welfare, Rampachodavaram, E.G. Dist., and others, ; Ashifaquddin and Others Vs. Mohd. Azizuddin and Others,). By a subsequent notification, the Act was extended to the Badrachalam taluq.

14. The Agency Rules were made, in the exercise of the powers conferred u/s 6 of the Scheduled Districts Act, 1874, for administration of the agency tracts and to regulate the procedure, for officers so appointed, to administer them. Under Rule 1 thereof the Collectors and District Magistrates, under the designation of Agents to the State Government, were to be the Collectors, District Magistrates and District Judges within the agency tracts included in their respective districts. Rule 1(2) vested in the Agent the same powers as were vested in the revenue courts for the trial and determination of suits coming before them. The Agency Rules contained separate

provisions for civil justice, jurisdiction of courts, transfer of suits, for institution, trial and determination of suits etc. Subsequently, the Agency Tracts Interest and Land Transfer Act, 1917 (Act 1 of 1917) came to be passed with the object of limiting the rate of interest and to check the transfer of lands in the agency tracts, (Vemana Somalamma and others Vs. Deputy Collector, Tribal Welfare, Rampachodavaram, E.G. Dist., and others,), including lands in Ganjam, Visakhapatnam and Godavari areas. These areas were described as "agency tracts" as they were under the administration of an Agent. Section 2(a) of Act 1 of 1917 defined "agency tracts" to mean the "Scheduled Districts" as defined in the Scheduled Districts Act, 1874. (Hota Venkata Surya Sivarama Sastry Vs. State of Andhra Pradesh, ; Gundla Venkateswara Rao and Another Vs. District Collector, Khammam District Khammam and Others,).

15. The Montague and Chelmsford Report, 1918 briefly touched upon the administration of tribal areas and political reform. It recommended exclusion of tribal areas from the reformed Provincial Governments. It suggested that the tribal backward areas should be excluded from the proposed political reforms; their administration entrusted to the Governors of the Provinces; and the political reforms, contemplated for the rest of British India, should not apply to these backward areas where people were primitive and ''there was no material on which to found political institutions''. These backward tracts were to be administered personally by the heads of the Provinces. The Government of India Act, 1919 divided the Agency/Scheduled/Tribal Areas into two parts--"wholly excluded" and "partially excluded" areas for reform. The former were small, and joint responsibility was given to the Governor and the Governor General-in-Council over the latter. Some areas were considered so backward that they were wholly excluded from the scope of the reforms. Its effect was that neither the Central nor the Provincial Legislature had power to make laws applicable to these areas, and the power of legislation was vested in the Governor acting with his Executive Council, the Ministers being excluded from having any say in the administration of these areas. (Samatha Vs. State of A.P. and Others,).

16. Until the Simon Commission, the aim was primarily to give inhabitants of these areas security of land tenure, freedom to pursue their traditional means of livelihood, and a reasonable exercise of their ancestral customs. The Simon Commission report, 1930 opined that perpetual isolation from the mainstream was not a satisfactory long-term solution; it would be necessary to educate them to, ultimately, become self-reliant; practically nothing had been achieved in this direction; this problem was one of considerable magnitude and complexity; on the one hand it was too large a task to be left to the efforts of missionaries and individual officials, since coordination of activity and adequate funds were required; on the other hand, the typically backward tract was a deficit area and ''no provincial legislature was likely to possess either the will or the means to devote special attention to its particular requirements''. The Simon Commission was of the view

that the responsibility, for the backward classes, would be adequately discharged only if it was entrusted to the Centre. It recognized that it would not be a practicable arrangement if centralization of administrative authority in these areas led to a situation in which these areas would be separated from the Provinces of which they were an integral part and, in order to meet this difficulty, the Commission suggested that, even though there would be Central responsibility, the backward tracts should not be separated from the Provinces but the Central Government should use the Governors as Agents for the administration of these areas and, depending on the degree of backwardness, it could be laid down by Rules how far the Governor would act in consultation with his Ministers in the discharge of these agency duties. (Samatha Vs. State of A.P. and Others, ; B. Shiva Rao''s Study Volume V of The Framing of India''s Constitution). The Simon Commission, in its 1930 report, observed:

There were two dangers to which subjection to normal laws would have specially exposed these peoples, and both arose out of the fact that they were primitive people, simple, unsophisticated and frequently improvident. There was a risk of their agricultural land passing to the more civilized section of the population, and the occupation of the tribals was for the most part agricultural; and, secondly they were likely to get into the "wiles of the money-lender." The primary aim of Government policy then was to protect them from these two dangers and preserve their tribal customs; and this was achieved by prescribing special procedures applicable to these backward areas.

(Arka Vasanth Rao and others Vs. Govt. of A.P. and others,).

17. The proposal, for centralising administration of these areas, was however not adopted in the constitutional reforms of 1935. Samatha Vs. State of A.P. and Others, ; B. Shiva Rao''s Study Volume V of The Framing of India''s Constitution). The Government of India Act, 1935, came into force on April 1, 1937. The "Scheduled Districts", defined in the Scheduled Districts Act, 1874, were treated as "excluded" and "partially excluded areas", and their administration was vested exclusively in the Governor of the Province u/s 92(1) of the Government of India Act, 1935. u/s 91(1) of the Act, the expressions "excluded areas" and "partially excluded areas" meant, respectively, such areas as His Majesty may, by Order in Council, declare to be "excluded areas" or "partially excluded areas". The areas (agency tracts) came to be known either as "excluded" or as "partially excluded" areas. (Hota Venkata Surya Sivarama Sastry Vs. State of Andhra Pradesh, ; Hota Venkata Surya Sivarama Sastry Vs. State of Andhra Pradesh,). In the exercise of the powers conferred u/s 91(1) of the Act, the Government of India (Excluded and Partially Excluded Areas) Order, 1936 was made on 03.03.1936. (Samatha Vs. State of A.P. and Others,). The "Excluded Areas" or "Partially Excluded Areas" were specified in the Excluded Areas Order in Council, 1936. By this order, the areas excluded from the Provincial Legislature were enlarged. The agency areas of Ganjam, Visakhapatnam and

Godavari were specified as "partially excluded areas". (Ashifaquddin and Others Vs. Mohd. Azizuddin and Others, ; Hota Venkata Surya Sivarama Sastry Vs. State of Andhra Pradesh,).

18. Section 92(1) of the Government of India Act, 1935 excluded, from an "excluded" or "partially excluded area", all legislation; and no Act was operative within such an area unless a notification to that effect was published by the Governor of the Province in the manner indicated therein. The provisions of Section 92(1) were similar to those contained in Sections 5 and 5A of the Scheduled Districts Act (Act XIV of 1874), though in the earlier Act the sanction of the Governor-General in Council was necessary even for making a notification. (AIR 1949 175 (Federal Court)). No act of the Federal Legislature or of the Provincial Legislature was to apply to an "excluded" or a "partially excluded area" unless the Governor, by public notification, so directed. Section 92(2) of the Government of India Act, 1935 conferred power on the Governor to make regulations for the peace and good government of any area in a Province which was an "excluded" or a "partially excluded" area, and any Regulations so made could repeal or amend any Act of the Federal Legislature or the Provincial Legislature or any existing Indian law which was, for the time being, applicable to the area in question. (Ram Kirpal Bhagat and Others Vs. The State of Bihar,). The powers exercised by a Governor, u/s 92(2) of the Government of India Act, 1935, were legislative powers. The Governor was expressly empowered to repeal or amend any Act of the Federal Legislature or of the Provincial Legislature or any existing law which he considered necessary in the interest of peace and good government. The exercise of this power was not limited to any period of time or to any particular entry in the three lists in the Seventh Schedule to the Act. With regards the "excluded" and "partially excluded areas", with a substantial element of aboriginal population, the policy was to make the general rules of law and procedure, obtaining in other parts of the country, inapplicable to them and to vest authority in the Governor-General in Council, or the administrative head of the province, to legislate for them in a summary manner. (AIR 1949 175 (Federal Court)). Subsequently, by the Government of India (Adoption of Indian Laws) Order, 1937, the Schedule Districts Act, 1874 was repealed, and the "excluded" and "partially excluded areas" came directly under the governance of the Governor u/s 92 of the Government of India Act, 1935. (Vemana Somalamma and others Vs. Deputy Collector, Tribal Welfare, Rampachodavaram, E.G. Dist., and others, ; Ashifaquddin and Others Vs. Mohd. Azizuddin and Others, ; Samatha Vs. State of A.P. and Others,).

19. The Cabinet Mission''s statement dated 16-5-1946 mentions the "excluded" and "partially excluded areas", and the tribal areas, as requiring the special attention of the Constituent Assembly. The Advisory Committee on Fundamental Rights and Minorities, to be set up at the preliminary meeting of the Assembly, was to contain due representation of all interests; and one of its functions was to report to the Constituent Assembly on a scheme for the administration of "Tribal and Excluded

Areas". At its meeting on 27-2-1947, the Advisory Committee set up three sub-committees--one of which was to consider the position of "excluded" and "partially excluded areas" in the Provinces other than Assam. (B. Shiva Rao''s Study Volume V of The Framing of India''s Constitution; Samatha Vs. State of A.P. and Others,). The subcommittee was of the view that areas, predominantly inhabited by tribals, should be known as ''Scheduled Areas'' (the intention being that these areas should figure in a schedule to a notification), and special administrative arrangements be made in regard to them. At the same time, having found the treatment of exclusion and partial exclusion to be a failure, the sub-committee recommended that the responsibility for the betterment and welfare of these areas should be squarely that of the Provincial Governments, but the ultimate responsibility was to be that of the Centre, both for drawing up plans for the betterment of these areas and for providing the necessary finances. In order to ensure that the requirements of these areas were given full consideration, the sub-committee recommended that the Constitution should provide for the setting up in each Province of a body which would keep the Provincial Government constantly in touch with the needs of the aboriginal tracts in particular, and with the welfare of the tribes in general. This body was to be known as the Tribes Advisory Council which was to have a strong representation of various tribes. The Tribes Advisory Council would primarily advise the Government in regard to the application of laws to the Scheduled Areas: no laws affecting the following matters would apply if the Tribal Advisory Council considered such a law unsuitable: (1) social matters; (2) occupation of land, including tenancy laws, allotment of land and setting apart of land for village purposes; and (3) village management, including the establishment of village panchayats. (B. Shiva Rao''s Study Volume V of The Framing of India''s Constitution; Samatha Vs. State of A.P. and Others,).

20. The Indian Independence Act, 1947, which came into force on 18.07.1947, provided for the setting up in India of two independent Dominions; and to substitute other provisions, for certain provisions of the Government of India Act, 1935, which applied outside those Dominions. Section 8(1) of the 1947 Act provided that, in the case of each of the new Dominions, the powers of the Legislature of the Dominion shall, for the purpose of making provision as to the constitution of the Dominion, be exercisable in the first instance by the Constituent Assembly of that Dominion. Section 8(2) stipulated that, except in so far as other provision is made by or in accordance with a law made by the Constituent Assembly of the Dominion under sub-section (1), each of the new Dominions and all Provinces and other parts thereof shall be governed, as nearly as may be, in accordance with the Government of India Act, 1935. In the exercise of the powers conferred u/s 8(2) of the Indian Independence Act, 1947, the Governor-General made the India (Provisional Constitution) Order, 1947. The said order came into force on 15.08.1947. Under the Schedule to the said Order, Section 91 of the Government of India Act, 1935 was substituted and the expressions "excluded areas" and "partially excluded areas"

were defined to mean, respectively, such areas as were "excluded" or "partially excluded areas" immediately before the establishment of the Dominion.

21. In the Constituent Assembly, when the provisions relating to the administration and control of the Scheduled Areas and the Scheduled Tribes were taken up for consideration, Dr. K.M. Munshi, a member of the Drafting Committee, said:

We want that the Scheduled Tribes in the whole country should be protected from the destructive compact of races possessing a higher and more aggressive culture and should be encouraged to develop their own autonomous life; at the same time, we want them to take a larger part in the life of the country adopted. They should not be isolated communities or little republics to be perpetuated for ever.

22. Adverting to the question, as to the application of laws enacted by Parliament and the State Legislature to the "Scheduled Areas", Dr. Munshi said:

..... an Act of the Parliament or an Act of the State Legislature would straightway apply to the scheduled area, but if the Governor thinks that in the interests of the tribals, certain sections of such an Act should not apply, he should be free to decide.

23. In the exercise of his discretion, the Governor, according to Dr. Munshi, was bound by the advice of the Council of Ministers. The debate was closed by Dr. Ambedkar, the Chairman of the Drafting Committee, observing:

Mr. Munshi has said everything that was needed to be said and I do not think I can usefully add anything.

(Arka Vasanth Rao and others Vs. Govt. of A.P. and others,).

II. Regulations Made by the Erstwhile Hyderabad State, Prior to The Commencement of the Constitution, to Protect the Interests of Tribals:

24. Hyderabad was one among the several Princely States. (The Director of Industries & Commerce, Govt. of The Director of Industries and Commerce, Government of Andhra Pradesh, Hyderabad and Another Vs. V. Venkata Reddy and Others, , the Govt. of H.E.H. the Nizam was in governance of an independent State and the territory, of the Govt. of H.E.H. the Nizam, was not part of the territory of India. (Janarthan Reddy v. The State 1951 Cri.L.J. 391). As erstwhile Hyderabad was not a part of British India neither the Scheduled Districts Act, 1874, nor the Agency Rules framed thereunder, were applicable. Consequently the Agency Rules were not in force in the Telangana Area which was then part of the erstwhile State of Hyderabad. (Ashifaquddin and Others Vs. Mohd. Azizuddin and Others,). In 1946 it was felt necessary to introduce necessary Legislation for the proper administration of tribal areas and the "Tribal Area Dastur-ul-Amal" was framed for this purpose i.e., the Tribal Areas Regulation, 1356 Fasli. The Governor-General of India and the Nizam of Hyderabad signed an agreement on November 27, 1947. This agreement allowed the Nizam to maintain an autonomous status while, at the same time,

having relations with the Indian Union. In the Princely States there was a representative, of the Government of India, called the Resident. After the Police action in September, 1948 Sri K.M. Munshi was the Agent General (Representative) in Hyderabad State. Major General J.N. Chowdary was made the Military Governor of the State. In 1949 the Dastur-ul-Amal was revised and, with certain alterations and modifications, the Tribal Area Regulation 1359F was promulgated. (Report on the Administration of Hyderabad State for the period from September 1948 to March 1950, Chapter VI--Social Services among the Tribes and Back Ward Classes, of the Government of Hyderabad). In the exercise of the powers conferred on him by a Firman of H.E.H. the Nizam dated 20.09.1948, a series of legislative measures were taken by the Military Governor. Among them was the Tribal Areas Regulation, 1359 F. While the Tribal Areas Regulation, 1359 Fasli came into force immediately, Section 1(2) thereof provided that the remaining provisions of the Regulations would come into force in such areas, and from such dates, as the Government may, by notification in the Jarida, direct. Section 3 of the Regulations stipulated that, notwithstanding anything contained in any law for the time being in force, the Government may, by notification in the Jarida, direct that any Act, Regulation, or Rule, for the time being in force in the Hyderabad State, shall not apply to any notified tribal areas specified in the notification or shall apply thereto with such omissions and modifications as may be so specified. Section 4(1) enabled the Government, by notification in the Jarida, to make such rules as was necessary or expedient for the better administration of any notified tribal area in respect of tribals, and of their relations with non-tribals. Among the matters for which Rules could be made u/s 4(2) of the Regulations included (a) barring the jurisdiction of courts of law or revenue authorities in any dispute relating to lands, houses or house sites occupied, claimed, rented or possessed by any tribal, or from which any tribal may have been evicted; (d) vesting in the Agent of all civil and revenue jurisdiction in cases involving the rights of any tribal in any land, house or house site situated in any notified tribal area; (f) prohibiting the grant of patta right over any land, in any notified tribal area, to a non-tribal, and empowering the Agent to cancel or revise any title in land granted to a non-tribal, in any notified tribal area, during a specified period preceding the coming into force of the Regulation; (k) abolition of Patel and Patwari Watans in any notified tribal area, and replacement of non-tribal village officers by Tribal village officers; (l) controlling money lending in a notified Tribal area; (m) constitution of Panchayats and entrustment to Panchayats of such criminal and civil jurisdiction and such social duties as may be prescribed etc. u/s 5, any Rule made u/s 4 , and any order made under such Rule, was to have effect notwithstanding anything inconsistent therewith contained in any enactment other than the Regulations or in any instrument having effect by virtue of any enactment other than the Regulations. (Samatha Vs. State of A.P. and Others, ; Ashifaquddin and Others Vs. Mohd. Azizuddin and Others,).

25. In the exercise of the powers conferred by Section 4 of the Tribal Area Regulations, 1359 Fasli, the Government of Hyderabad made the Notified Tribal Areas Rules, 1359 Fasli (hereinafter called the "Rules") which were also notified on 16.11.1949. Under Rule 4, the Agent was competent to appoint such person or persons, as he considered desirable, to be the members of a Panchayat for such village or villages as he may specify; and to entrust to such Panchayat any of the duties specified in the Rules. Rule 2 of the Rules stipulated that administration of a notified tribal area, in respect of matters covered by the Rules, was to vest in the Agent. Rule 5 stipulated that no Court of law, or revenue authority, shall have any jurisdiction, in any Notified Tribal Area, in any dispute relating to land, house or house occupied, claimed, rented or possessed by any tribal or from which any tribal may have been evicted whether by process of law or otherwise during a period of one year preceding the notification of such area as a Notified Tribal Area. Rule 6 stipulated that all suits or proceedings relating to matters covered by Rule 5, pending before any court of law or revenue authority on the date of the notification of such area as a tribal area, shall be transferred to the Agent concerned who shall deal with such suits or proceedings in the manner provided under the Rules. Under Rule 7, if the Agent was of the opinion that it was necessary to cancel any decree or order passed by a Court of law or revenue authority, during the period of three years preceding the enforcement of the said Regulation in such areas which adversely affected the right of a tribal in any land or house or house site, he may recommend its cancellation to the Government, and the Government may pass such orders thereon as they deemed fit. Rule 8 required a Panchayat to decide all cases in open durbar in the presence of both the parties and atleast three independent witnesses. Part II of the said Rules dealt with criminal justice. Rule 13, in Part-II of the Rules, provided that, subject to the provisions of Rule 16, criminal justice, in respect of the offences mentioned thereunder in which a Tribal was involved as a party, shall be administered by the Agent. Rule 14 stipulated that the Agent shall be competent to pass any sentence warranted by the law in respect of the offences mentioned in Rule 13. Rule 16 enabled the Agent to authorise a Panchayat, constituted under Rule 4, to try the offences mentioned thereunder in which a tribal was involved as a party, and the panchayat was competent to impose the fine stipulated in the said Rule. Part III of the Rules related to civil justice. Rule 26 stipulated that civil justice, in cases involving the rights of any tribal, shall be administered by the Agent, and the panchayat, if any, authorised under the Rules, subject to the condition that the Agent shall be competent to exercise the powers of any Court subordinate to the High Court. Under Rule 27 the Panchayats, constituted under Rule 4, were competent to try all cases without limit as to amount in which both the parties were tribals and lived within their jurisdiction, subject to the conditions laid down in Rule 26. Rule 39 stipulated that no tribal debtor should be imprisoned, for non-payment of a debt, except when the Agent was satisfied that the debtor had made a fraudulent disposition or concealment of property in which case he may be detained for a period not exceeding six months. Part IV related to

revenue jurisdiction and, under Rule 42 thereunder, in cases involving the rights of any tribal, jurisdiction would vest in the Agent subject to the condition that the Agent would be competent to exercise powers not higher than those of the Board of Revenue. Under Rule 52, if the Agent was of the opinion that it was desirable to cancel or revise any title in land granted to a non-tribal, in any notified tribal area during a period of one year preceding the coming into force of the said Regulations, he could recommend its cancellation to the Government which could pass such orders thereon as they deemed fit. Under Rule 53 no land cultivated by a tribal, or in respect of which he claimed that he had a right to hold, could be sold in execution of any decree or order of any Civil or Revenue Court whether made before or after the coming into force of the said Regulations and all sales, not finally confirmed before the date of enforcement of the said Regulations, should be cancelled and all such cases should be transferred to the Agent for disposal.

26. In the exercise of the powers conferred by Section 1(2) of the Tribal Areas Regulation, 1359 Fasli, the Government of Hyderabad issued notification dated 16.11.1949 directing that the said Regulations would come into force, 15 days after its publication in the Jarida, in the two areas specified in Parts I and II respectively of the annexed schedule. Hyde The Regulations thus came into force, in its entirety, on 01.12.1949. Part II of the Schedule, to the Notification dated 16.11.1949, included Warangal District and, thereunder, in Paloncha taluq all the villages of the taluq and Samsthan of Paloncha, with the exception of the following villages: 1) Paloncha, 2) Borgampad, 3) Ashwaraopet, 4) Dammapet, 5) Kuknur and 6) Nelipak, were notified as the tribal areas wherein the Regulations would come into force. The Census report of 1941 A.D. in relation to Warangal District, showed the subject 23 villages in Zone-V segment of Paloncha taluq. These 23 villages, which were then part of Paloncha taluq of Warangal District, were therefore part of the "Notified Tribal Areas" of Hyderabad State as none of them were among the six villages in Paloncha taluq which were excepted, from the application of the Regulations, under the notification dated 16.11.1949. These 23 villages continued to be a part of the tribal areas of the erstwhile Hyderabad State till it became a Part B State, under Schedule I of the Constitution of India, from 26.01.1950 onwards.

27. Section 1(2) of the Tribal Area Regulations, 1359 Fasli was substituted and Section 1-A was inserted later into the Regulations. The substituted Section 1(2) provided that the remaining provisions of the Regulations would come into force in such areas as may be declared to be Scheduled Areas under paragraph 6 of the Fifth Schedule to the Constitution of India, and from such dates as the Government may, by notification in the Official Gazette, direct. Section 1-A stipulated that, with effect from the commencement of the Constitution of India, the provisions of the Regulations shall be in force subject to the provisions of the Constitution and any provision in the Regulation, which is inconsistent with the provisions of the Constitution of India, shall, to the extent of repugnancy, be deemed to have been repealed. Thus, till the coming into force of the Constitution of India, the Agency

Rules were in force in the agency areas of Andhra, and the Notified Tribal Areas Rules, 1359 fasli were in force in the Telangana area. (Ashifaquddin and Others Vs. Mohd. Azizuddin and Others,).

28. From a conspectus of the provisions concerning the scheduled areas, and their legislative history, it is clear that the Scheduled Areas have been treated differently, as the tribals inhabiting the Scheduled Areas needed special protection. (Arka Vasanth Rao and others Vs. Govt. of A.P. and others,). The development of law, in relation to the Scheduled Areas, clearly indicate one purpose viz., to see that the entire land in agency/tribal tracts, as far as possible, be given to tribals only. This was because, within the Scheduled Areas, land was originally in the occupation of tribals; and the non-tribals, exploiting their ignorance and illiteracy, came into possession of the properties, in many cases, by means which were not fair. (Vemana Somalamma and others Vs. Deputy Collector, Tribal Welfare, Rampachodavaram, E.G. Dist., and others,).

III. Measures Taken, to Protect the Scheduled Tribes, After The Commencement of the Constitution of India:

29. On 26.11.1949 the Constituent Assembly adopted and enacted the Constitution of India. Article 394 of the Constitution of India stipulated that the said Article, and Articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392 and 393, would come into force at once, and the remaining provisions of the Constitution would come into force on 26.01.1950 which day would be referred to, in the Constitution, as the commencement of the Constitution. Article 395 repealed the Indian Independence Act, 1947 and the Government of India Act, 1935 together with all enactments amending or supplementing the latter Act. Article 2 of the Constitution of India, as originally enacted, enabled Parliament, by law, to admit into the Union or establish new States on such terms and conditions as it thought fit. Article 3 empowered Parliament, by law, to form a new State by separation of territory from any State, increase or diminish the area of any State, alter the boundaries of any State and alter the name of any State. Part B of the First Schedule, which included the State of Hyderabad, stipulated that the territory of the State in Part B shall comprise the territory which, immediately before the commencement of the Constitution, was comprised in or administered by the Government of the corresponding Indian State.

30. To safeguard the interests of the scheduled tribes, living in remote or hilly areas or forests with a culture of their own, the Constitution envisaged formation of Scheduled Areas for them, and application of laws to them with ''exceptions and modifications'', so that they were able to preserve their culture and occupation, and were not exposed to exploitation by the forward classes/Urban Population. (Union of India (UOI) etc. Vs. Rakesh Kumar and Others etc., ; Ashok Kumar Tripathi Vs. Union of India (UOI) and Others,). Article 366(23) of the Constitution of India defines "Schedule" to mean the Schedule to the Constitution. Article 366(25) defines "Scheduled Tribes" to mean such castes, races or tribes or parts of or groups within

such castes, races or tribes as are deemed under Article 341 to be the Scheduled Castes for the purpose of the Constitution.

31. Part-X of the Constitution relates to the Scheduled and Tribal Areas. Article 244(1) thereunder, as it originally stood, stipulated that the provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State specified in Part A or Part B of the First Schedule other than the State of Assam. The Fifth Schedule to the Constitution of India consists of 7 paras in Parts A, B, C and D. Para 6(1) in Part C defines "Scheduled Areas" to mean the areas as the President may, by order, declare to be the "Scheduled Areas". Clause (2) of para 6, as it originally stood, stipulated that the President may, at any time, by order (a) direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area; (b) alter, but only by way of rectification of boundaries, any Scheduled Area. Para 6(2) makes it clear that, save as aforesaid, the order made under Para 6(1) shall not be varied by any subsequent order. Part D Para 7(1) enables Parliament to amend the Schedule by way of addition, variation or repeal of any of the provisions of the Fifth Schedule. (Samatha Vs. State of A.P. and Others, ; Edwingson Bareh Vs. State of Assam and Others, ; Arka Vasanth Rao 1995(1) ALD 801).

32. In the exercise of the powers conferred by Para 6(1) of the V Schedule to the Constitution, the President made the Scheduled Areas (Part-A States) Order on 07.12.1950 declaring certain areas, within the States in Part A of the first schedule to the Constitution, to be the "Scheduled Areas", and the Scheduled Areas (Part-B States) Order, 1950 on 07.12.1950 declaring certain areas in Part B States of the first schedule to the Constitution, to be the "Scheduled Areas". The East Godavari, West Godavari and Visakhapatnam Agencies (Vizianagaram and Srikakulam Districts were part of it) were declared to be Scheduled Areas in Madras Province under the Scheduled Areas (Part-A) States Order, 1950. The Scheduled Areas (Part-B States) Order, 1950 was notified in S.R.O. 1031 dated 07.12.1950, and was published in the Extraordinary Gazette No. 90 dated 07.12.1950. Para. 2 of the said order stipulates that the areas specified thereunder were declared to be the "Scheduled Areas" within the States specified in Part B of the first schedule to the Constitution. In so far as the Part-B State of Hyderabad was concerned, while Para 10 thereof declared several villages of Mulug taluq of Warangal District to be Scheduled Areas, the subject 23 villages are not among them. However, under Para 13(i) thereof, all the villages of Paloncha taluq of Warangal District, (excluding Paloncha, Boergampad, Ashwaraopet, Dammapet, Kuknoor and Nelipak villages), and the Samsthan of Paloncha were declared as Scheduled Areas within the Gundla Venkateswara Rao and Another Vs. District Collector, Khammam District Khammam and Others, ; Vemana Somalamma and others Vs. Deputy Collector, Tribal Welfare, Rampachodavaram, E.G. Dist., and others, ; Samatha Vs. State of A.P. and Others,). Para 3 of the Scheduled Areas (Part-B States) Order, 1950 stipulated that any reference in the preceding paragraph of the territorial division, by whatever name

indicated, shall be construed as a reference to the territorial division of that name existing at the time of the order. These Scheduled Areas in the Telangana Area of the Hyderabad State, which was a Part B State, continued to be governed by the provisions of the Tribal Areas Regulation, 1359 Fasli, and the Notified tribal Areas Rules, 1359 Fasli framed thereunder, even after formation of the State of Andhra Pradesh in 1956. (Ashifaquddin and Others Vs. Mohd. Azizuddin and Others,).

33. Part-B of the Fifth Schedule relates to administration and control of the Scheduled Areas and Scheduled Tribes. Para 4(1), thereunder, stipulates that there shall be established in each State, having Scheduled Areas therein, a Tribes Advisory Council consisting of not more than 20 members of whom, as nearly as may be, 3/4th shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State. Para 4(2) stipulates that it shall be the duty of the Tribes Advisory Council to advise on such matters, pertaining to the welfare and advancement of the Scheduled Tribes in the State, as may be referred to them by the Governor or the Rajpramukh.

34. Para 5 in Part-B of the V Schedule relates to the Laws applicable to Scheduled Areas. Para 5(1), as it originally stood, stipulated that, notwithstanding anything in the Constitution, the Governor or the Rajpramukh may, by public notification, direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification, and any direction given under para 5(1) may be given so as to have retrospective effect. Para 5(2) enabled the Governor or Rajpramukh to make regulations for the peace and good government of any area in a State which was, for the time being, a Scheduled Area. In particular, and without prejudice to the generality of the foregoing power, such regulations could be made (a) to prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area; (b) regulate allotment of land to members of the Scheduled Tribes in such area; and (c) regulate the carrying on of business as moneylender by persons who lend money to members of the Scheduled Tribes in such area. Para 5(3) stipulated that, in making any such Regulation as is referred to in sub-paragraph (2), the Governor or the Rajpramukh may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is, for the time being, applicable to the area in question. Under para 5(4) all Regulations made under para. 4 shall be submitted forthwith to the President and, until assented to by him, shall have no effect. Para 5(5) stipulated that no Regulation shall be made under the said paragraph unless the Governor or the Rajpramukh, making the Regulation, has, in cases where there is a Tribes Advisory Council for the State, consulted such Council. The word "Rajpramukh" was subsequently deleted by the Constitution (Seventh Amendment) Act, 1956. (Samatha Vs. State of A.P. and Others,).

35. In the exercise of the powers conferred under Para 5(2) of the V Schedule to the Constitution, the Governor of Andhra Pradesh made the A.P. Scheduled Areas Land Transfer Regulation, 1959 (Regulation I of 1959) to regulate transfer of land in the Scheduled Areas of the East Godavari, West Godavari, Visakhapatnam, Srikakulam Districts of the erstwhile State of Andhra. These Regulations came into force with effect from 4-3-1959. Section 3(1) of the 1959 Regulations prohibited transfer of immovable properties situated in the "Scheduled Areas" from a member of scheduled tribe to non-tribals without 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. Under the 1959 Regulation, any transfer of immovable property situated in the Agency Tracts, by a member of a Scheduled Tribe was declared null and void unless made in favour of any other member of a Scheduled Tribe or a registered co-operative society composed solely of members of the Scheduled Tribes or with the previous consent in writing of the Agent. The said Regulation further empowered the Agent to decree an ejectment against any person in possession of any immovable property, the transfer of which was made in contravention of its provisions and to restore it back to the transferor or his heirs. Similar laws, designed to protect the tribals from exploitation, were in operation in the Telangana area of the then State of Hyderabad (i.e., the Tribal Area Regulations, 1359 Fasli). (Gundla Venkateswara Rao and Another Vs. District Collector, Khammam District Khammam and Others, ; P. Rami Reddy and Others Vs. State of Andhra Pradesh and Others, ; Vemana Somalamma and others Vs. Deputy Collector, Tribal Welfare, Rampachodavaram, E.G. Dist., and others,). The 1959 Regulations were made to give effect to the power of the Governor under clauses (a) and (b) of para 5(2) of the Fifth Schedule for "peace and good government" in the Agency tracts. The predominant object of para 5(2) of the Fifth Schedule of the Constitution and the 1959 Regulations was to protect the possession, right, title and interest of the members of the Scheduled Tribes in the land held hitherto by the tribals. (Samatha Vs. State of A.P. and Others,).

36. The Governor of Andhra Pradesh, in the exercise of the powers conferred on him under para 5(2) of the Fifth Schedule to the Constitution of India and after consulting the A.P. Tribes Advisory Council, made the Andhra Pradesh Scheduled Areas Laws (Extension and Amendment) Regulation, 1963 (hereinafter called "the 1963 Regulations"). The 1963 Regulations, which was extended to the whole of the Scheduled Areas in the State of Andhra Pradesh, received the assent of the President on 09.08.1963 and was published in the A.P. Gazette on 21.09.1963. The 1963 Regulations extended the Rules referred to therein, which were in force on the commencement of the said Regulations in the Scheduled Areas in the territories which, immediately before the 1st November, 1956, were comprised in the State of Andhra to the Scheduled Areas in the entire State of Andhra Pradesh. Among the Rules and Regulations, referred to in the 1963 Regulations, were the Agency Rules and the 1959 Regulations. By Section 8(1) of the 1963 Regulations, the Tribal Areas

Regulation, 1359 Fasli was repealed and any law, corresponding to any of the extended Regulations, was to cease to have effect in the Scheduled Areas in which the Tribal Areas Regulation, 1359 F were in force. Section 8(2) of the 1963 Regulations made it clear that, upon such repeal, the provisions of the A.P. General Clauses Act would apply and any proceedings, commenced under the said Regulation or Law and pending at the time of commencement of the 1963 Regulations, shall be disposed of in accordance with the provisions of the said Regulation or law as if the said Regulation or law had continued in force and the 1963 Regulations had not been made. It is by virtue of the Andhra Pradesh Scheduled Areas Laws (Extension and Amendment) Regulation, 1963 that the Andhra Pradesh Agency Rules have been extended to the Scheduled Areas in the Telangana Area of the State of Andhra Pradesh. (Ashifaquddin and Others Vs. Mohd. Azizuddin and Others, ; Gundla Venkateswara Rao and Another Vs. District Collector, Khammam District Khammam and Others,).

37. There has been some criticism regarding extension of the 1959 Regulations to, and the repeal of the Tribal Area Regulations, 1359 F which was in force in, the Telangana Area of the State of Andhra Pradesh. The Tribal Area Regulations, 1359 Fasli was viewed, in several quarters, as conferring a far greater degree of protection and benefit to the Scheduled Tribes than the 1959 Regulations. In "The Tribes of India: Struggle for Survival", Christoph von Fiirer-Haimendorf has analyzed the status of the Tribal Area Regulation, 1359 F. To quote:-

.....The culmination of the entire tribal policy of Hyderabad State was the promulgation of an act known as the Tribal Areas Regulation 1356 Fasli (1946 A.D.). This regulation empowered the government to "make such rules as appear to them to be necessary or expedient for the better administration of any notified tribal area in respect of tribals and of their relations with non-tribals." The substance of this regulation was incorporated in the Tribal Areas Regulation 1359 Fasli (1949 A.D.) and the rules giving effect to its provisions were issued by the Revenue Department under the title Notified Tribal Areas Rules 1359 Fasli on 16 November 1949. A schedule annexed to the Tribal Areas Regulation notified as "tribal" 384 specified villages in Adilabad District plus all the 169 villages of Utnur taluq, and 156 specified villages in Warangal District plus all the villages of Yellandu taluq minus 3 named villages and all the villages of the taluq and Samasthan of Paloncha minus 6 named villages. The schedule described the area to which the Notified Tribal Areas Rules were to apply".

Even after the partition of Hyderabad State in 1956 and the merging of the Telengana districts with the Andhra districts in the new State of Andhra Pradesh, the Hyderabad Tribal Areas Regulation of 1949 remained in force for seven more years. Unfortunately for the aboriginals of the Telangana districts, this regulation was repealed in 1963 and replaced by the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959. While the latter regulation also protected the land of

tribals, prohibiting any transfer to non-tribals, it did not contain any provision for the maintenance of tribal panchayat, and more importantly stripped the social service officers of the authority and judicial powers with which the Hyderabad regulation and rules had invested them.

(emphasis supplied)

38. Difficulties were experienced by the State Government, in implementing the ejectment procedures under the 1959 Regulations, as it was not always easy for the concerned authority to ascertain the origin of the right under which the non-tribal was claiming possession, and whether the land under the possession of a non-tribal was previously acquired from a tribal or not. If alienations were permitted in favour of non-tribals, there was a danger of large-scale exploitation by the new non-tribals again with the likelihood of peace being disturbed in that area. Several Committees observed that non-tribals were able to find ways and means to circumvent the provisions of Regulation 1 of 1959 entering into benami and other clandestine transactions with unsophisticated tribals. It was found necessary to create conditions for maintenance of peace, and prevent new non-tribals from settling down in the Scheduled Areas. (P. Rami Reddy and Others Vs. State of Andhra Pradesh and Others, ; Samatha Vs. State of A.P. and Others, ; Vemana Somalamma and others Vs. Deputy Collector, Tribal Welfare, Rampachodavaram, E.G. Dist., and others,).

39. In the exercise of the powers conferred by Para 5(2) of the V Schedule, the Governor of Andhra Pradesh, with the assent of the President, made the Andhra Pradesh Scheduled Areas Land Transfer (Amendment) Regulation, 1970 (Regulation No. 1 of 1970) amending and substituting Section 3 of the 1959 Regulations. Regulation 1 of 1970, in order to facilitate effective enforcement of the 1959 Regulations, introduced a rule of presumption to the effect that, unless the contrary was proved, where a non-tribal was in possession of land in the Scheduled Areas, he or his predecessor-in-interest should be deemed to have acquired it through transfer from a tribal. It is only with a view to enforce the valid provisions of Regulation 1 of 1959, and in the interests of the tribals and for their protection, that Regulation I of 1970 was passed as, without restricting or prohibiting alienation of lands in the possession of tribals to non-tribals, the objective could not be achieved. (Samatha Vs. State of A.P. and Others, ; Vemana Somalamma and others Vs. Deputy Collector, Tribal Welfare, Rampachodavaram, E.G. Dist., and others, ; P. Rami Reddy and Others Vs. State of Andhra Pradesh and Others,). The 1959 Regulations were amended, by Regulation No. 2 of 1970, with retrospective effect from 01.12.1963 and were made applicable to the Adilabad, Warangal, Khammam and Mahaboobnagar Districts in the Telangana Area of the State of Andhra Pradesh.

40. Bearing in mind the aforesaid legislative and Regulatory measures taken to protect the Scheduled Tribes from exploitation by the non-tribals, it is convenient to examine the rival submissions, of the Learned Senior Counsel and Counsel on either

side, under different heads.

IV. Did the Notification Dated 21.04.1950 Denude the Subject 23 Villages of the Notified Tribal Area Status Conferred on them by the Notification Dated 16.11.1949 Issued Under the Tribal Area Regulations, 1359 Fasli?

41. Sri S.Ramachandra Rao, Learned Senior Counsel appearing on behalf of the petitioners, would submit that these 23 villages, (i.e., (1) Kamalapuram; (2) Mangapeta (Podumuru); (3) Komatipalli; (4) Tondyal Lakshmipur; (5) Narasapur; (6) Cherupalli; (7) Timmampet; (8) Mahui; (9) Narsimhasagar; (10) Pooredipalli; (11) Chenchupalli; (12) Wadagudem; (13) Ramanakkapet; (14) Gollagudem; (15) Rajupeta; (16) Kathigudem; (17) Ramachandrunipet; (18) Barlagudem; (19) Bandarugudem; (20) Brahmanapalli; (21) Domeda; (22) Lodgugudem and (23) Akinipalli Mallaram), were not declared as ''Scheduled Areas'' in the Presidential Order dt. 7.12.1950; while other villages of Mulug Taluq were specifically named as ''Scheduled Areas'' therein, these 23 villages were explicitly excluded from the Presidential Order; the ZP Office, Warangal had furnished information, under the R.T.I. Act, stating that these 23 villages of Mangapet Mandal have not been notified as Scheduled Villages by the President of India as per this Hon''ble Court; the contention of the respondents, that the erstwhile Hyderabad Government had declared these 23 villages as Scheduled Areas by Notification dated 16.11.1.949 and hence these 23 villages continue to remain Scheduled Areas, is unsustainable in law as the erstwhile Hyderabad Government had subsequently by Notification dated 21.4.1950, while rearranging the territorial divisions, shifted these 23 villages, (which constitute 18 gram panchayats of Mangapet Mandal of Warangal District), to Mulug Taluq from Paloncha Taluq; and paragraph-3 of the Presidential Order specifically declares that the declaration of Scheduled Areas is applicable to the territorial divisions existing as on 7.12.1950.

42. It is submitted, on behalf of the respondents, that the Government of Hyderabad State, by notification dated 06-11-1949, had declared all the villages in Paloncha Taluq of Warangal District as Tribal Areas; the Tribal Area Regulation 1359 F was the law in force when the Presidential Order was issued on 07.12.1950; there has been no alteration of the Scheduled Areas pursuant thereto; as is evident from the 1941 census, these villages formed part of the Palvoncha Taluq of Warangal District which was notified as a Tribal Area under the Notification dated 16-11-1949, and the same has been reiterated and reproduced verbatim in "The Scheduled Areas (Part-B States) Order 1950" except 6 villages i.e. Paloncha, Burgumpad, Ashwaraopet, Dammapet, Kuknoor and Nellipaka; subsequently, by notification dated 21.04.1950, the Government of Hyderabad had tagged the 23 villages, which were earlier part and parcel of Paloncha Taluq, to Mulug Taluq in Warangal District for the purpose of revenue administration; the Notification dated 23.04.1950 was issued u/s 5 of the Hyderabad Land Revenue Act, 1317 Fasli (1907 A.D.), which has nothing to do with the power of H.E.H. the Nizam to declare certain areas as Tribal Areas (now known

as "Scheduled Areas" as per the Fifth Schedule to the Constitution); mere transfer of revenue villages, or revenue divisions of Districts or Taluqs, would not alter its nature as a "Scheduled Area", once it has been declared as such, except by the procedure envisaged under Para 6 of the Fifth Schedule, PART--C of the Constitution of India; the notification dated 16.11.1949 was adopted, and is reflected in the Presidential Order dated 7-12-1950; the Notification dated 21.4.1950 cannot be elevated to the status of a Presidential Order, more so as it has nothing to do with the declaration of tribal areas; the notification, issued under the Tribal Area Regulations, cannot be amended or altered under any other enactment except under the same Regulation; and the contention, that the Presidential Order dated 07.12.1950 does not include these 23 villages, is not tenable.

43. The Hyderabad land Revenue Act, 1317 Fasli was an Act to amend and consolidate the orders and regulations relating to land revenue. Section 5(1) of the said Act, as it then stood, stipulated that each Suba, under the control of a Subedar, shall be divided into such districts with such limits, and each district shall consist of such taluqas and each taluq shall consist of such villages, as the Government may, from time to time, determine by a notified order. Section 5(2) stipulated that, until altered by the Government, the present Subas, districts and taluqs shall continue for the purposes of the Act. The Hyderabad Land Revenue Act, 1317 Fasli was subsequently repealed by Section 5 of the A.P. Districts (Formation) Act, 1974.

44. Article 366(21)(a) of the Constitution of India, as it originally stood, defined "Rajpramukh" to mean, in relation to the State of Hyderabad, the person who, for the time being, was recognized by the President as the Nizam of Hyderabad. H.E.H. the Nizam, the absolute ruler of the erstwhile Princely State of Hyderabad, became the Rajpramukh of the Part-B State of Hyderabad on 26.01.1950, and continued as such till 31.10.1956. From 01.11.1956 the Telangana Area of the Part-B State of Hyderabad, along with the erstwhile State of Andhra, became the State of Andhra Pradesh. In the exercise of the powers conferred by Section 5 of the Hyderabad Land Revenue Act, 1317 Fasli, and in supersession of all previous orders in this behalf, H.E.H. the Nizam directed that the Taluqs, mentioned in column No. 4 of the schedule annexed to the Notification dated 21.04.1950, would consist of the villages mentioned against each of the 16 Schedules annexed thereto, and take effect from 06.05.1950. The subject 23 villages which were hitherto in Paloncha taluq were placed, by the said Notification dated 21.04.1950, in Mulug taluq of Warangal District.

45. The notification dated 21.04.1950, whereby these 23 villages in Paloncha Taluq were tagged to Mulug Taluq, was only for the purposes of the Hyderabad Land Revenue Act, and not the Tribal Area Regulations. As noted hereinabove, Section 5 of the Tribal Area Regulations 1359 fasli stipulated that any Rule made u/s 4, and any order made under such Rule, shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the Regulation or in

any instrument having effect by virtue of any enactment other than the Regulation. The notification dated 21.04.1950 is an instrument having effect by virtue of the powers exercised u/s 5(1) of the Hyderabad Land Revenue Act, 1317 Fasli. In view of the non-obstante clause in Section 5 of the Tribal Area Regulations, 1359 Fasli, the Notified Tribal Areas Rules, made u/s 4 of the said Regulations, continued to remain in force in the tribal areas notified u/s 1(2) of the said Regulations, notwithstanding the notification dated 21.04.1950 issued u/s 5(1) of the Hyderabad Land Revenue Act 1317 Fasli. The notification dated 16.11.1949 was in force in the tribal areas of the Part-B State of Hyderabad till the President issued the Scheduled Areas (Part-B States) Order dated 07.12.1950, notwithstanding the notification dated 21.04.1950 issued u/s 5(1) of the Hyderabad Land Revenue Act, 1317 Fasli. The said notification dated 21.04.1950, issued to alter the boundaries of the sub as, taluqs and districts of the Part-B State of Hyderabad for the purposes of the Hyderabad Land Revenue Act, 1317 Fasli, did not effect the tribal area status conferred on the notified tribal areas of the State of Hyderabad.

46. The notification dated 21.04.1950 was issued after the commencement of the Constitution. On or after 26.01.1950, when Article 244(1) and Scheduled V of the Constitution came into force, the power to declare any area as a "Scheduled Area" was conferred exclusively on the President, and not on the Rajpramukh or the Executive Government of a State. While issuing the notification dated 21.04.1950, u/s 5(1) of the Hyderabad Land Revenue Act, 1317 Fasli, H.E.H. the Nizam (Rajpramukh of the Part-B State of Hyderabad) could not have been unaware that he lacked power either to declare any area as a "Scheduled Area" or to direct that any part of the "Scheduled Area" shall cease to be a "Scheduled Area" or a part thereof. It is difficult, therefore, to accept the submission that, by way of the notification dated 21.04.1950 issued u/s 5(1) of the Hyderabad Land Revenue Act, 1317 Fasli, H.E.H. the Nizam, as the Rajpramukh of the Part-B State of Hyderabad, implicitly deleted the subject 23 villages of Paloncha taluq, from the list of Tribal Areas in the notification dated 16.11.1949.

47. Another notification was issued, under the Hyderabad Land Revenue Act, 1317 Fasli, on 18.5.53 dividing the Part-B State of Hyderabad into several districts comprising the taluqs mentioned against each of the schedules annexed to the order. In these proceedings, Khammam district was declared to comprise Madhira, Paloncha, Yellandu & Burgampahad taluqs. (Gundla Venkateswara Rao and Another Vs. District Collector, Khammam District Khammam and Others,). In the exercise of the powers conferred by Section 1(2) of the Tribal Area Regulation, 1359 Fasli the Rajpramukh, by notification dated 02.02.1954, directed amendment to be made to the Notification dated 16.11.1949 and, for the words "Parts I and II respectively" in the said notification, the words "Parts I, II and III respectively" were substituted. In Part II of the Schedule thereto, for the existing entries under the headings "Taluq Paloncha Villages", the following entries were to be substituted, as under Part III, namely:

PART-III

Khammam District

Taluq Paloncha:

2. All the villages of the taluq exempting the following villages:

1. Paloncha, 2. Aswaraopet, 3. Rampet, 4. Kuknoor.

Taluq Durgampahad:

3. All the villages of the taluq with exception of: 1. Durgampahad 2. Nellipak.

48. It is apparent from the contents of the notification dated 2.2.1954, that H.E.H. the Nizam, as the Rajpramukh of the Part-B State of Hyderabad, exercised powers under the Tribal Area Regulations, 1359 to amend the earlier notification dated 16.11.1949 issued under the said Regulations. The Notification dated 02.02.1954, while amending the earlier Notification dated 16.11.1949, makes no mention of any amendment having been made to the notification dated 16.11.1949 at any time prior thereto. (i.e. prior to issuance of the notification dated 02.02.1954). The subject 23 villages, which were in Paloncha Taluq of Warangal District under the Notification dated 16.11.1949, thus continued to remain part of the tribal areas of Paloncha Taluq and, instead of in Warangal District, they were shown to be a part of Khammam District under the notification dated 02.02.1954 issued under the Tribal Area Regulations, 1359 Fasli. While H.E.H. the Nizam, as the Rajpramukh, was not entitled to include any area or a village in, or delete them from, the list of "Scheduled Areas", as such a power was conferred exclusively on the President under Para 6(1) of the Fifth Schedule, he could relocate a village, which was a "Scheduled Area", from one district to another. Para 6(1) of the V Schedule does not empower the President to declare any part of the "Scheduled Areas" as "agency tracts" or "agency areas" or "tribal areas". It is for the Governor, while administering "Scheduled Areas", to declare "agency areas" (or "tribal areas") either in the whole or in any part of such "Scheduled Areas"; and make necessary laws for the administration of such areas. (Gundla Venkateswara Rao and Another Vs. District Collector, Khammam District Khammam and Others,).

49. The very fact that a subsequent notification dated 02.02.1954 was issued u/s 1(2) of the Tribal Area Regulations, 1359 Fasli shows that, if the Rajpramukh had intended to delete the subject 23 villages from the list of notified tribal areas of Paloncha taluq, he would have issued a notification under the Tribal Area Regulations, and not under the Hyderabad Land Revenue Act, 1317 Fasli. As the notification dated 16.11.1949, issued under the Tribal Area Regulations, 1359 Fasli, only excluded six villages of Paloncha taluq from the list of notified Tribal Areas, it is clear that the subject 23 villages remained part of the notified tribal areas of Paloncha Taluq of Warangal District in the Part-B State of Hyderabad till the Presidential Order dated 07.12.1950 was made, and continued thereafter as

"Scheduled Areas".

V. Tribal Areas Regulation, 1359 Fasli-was it the Law in Force, Immediately Before the Commencement of the Constitution of India, Under Article 372(1) Thereof?

50. It is contended, on behalf of the respondents, that it is not even the case of the petitioners that, by denotifying the earlier notification, the Government of Hyderabad had passed any subsequent notification; the orders, issued by an absolute Ruler of a former Indian State, must be held to be the "law in force", in the light of Article 372(1) of the Indian Constitution; such an order is a legislative act, and cannot be nullified by an executive act of the successor State; orders, made by governments of the erstwhile States, continue to remain in force; they are effective and binding on the successor State, unless they are modified, changed or repudiated by the governments of the successor State; the notification dated 16.11.1949 is still in force as it is an "existing law" within the meaning of Article 366(10) and Article 372(1) of the Constitution of India; the notification dated 16.11.1949 has not been superseded, annulled, modified or repealed by any subsequent order passed by the competent authority, and continues to remain in force till date in the light of Article 372(1) of Constitution of India; the contention that, as these 23 villages are not specifically referred to in the Presidential Order dt. 07.12.1950, they are not Scheduled Areas is not tenable; while the Presidential Order does not specifically refer to these 23 villages, it does not also specify that they have ceased to be the Scheduled Areas; the Presidential Order dated 07.12.1950 has not altered the notified tribal areas status conferred earlier, on these 23 villages, under the notification issued by the Government of Hyderabad dated 16.11.1949; as the Presidential Order dated 07.12.1950 is silent about these 23 villages, it can only mean that these 23 villages were not covered in the Presidential Order by inadvertence or oversight; consequently, the notification dated 16.11.1949 continues to be regulated and governed by Article 366(10) and Article 372(1) of the Constitution of India, Section 24 of the General Clauses Act, and Section 120 of the States Reorganization Act; these 18 Gram Panchayats (23 Revenue Villages) have not been altered, or declassified as a non-scheduled area in the Scheduled Area (Part-B States) Order 1950 till date; the Tribal Area Regulations, 1359 Fasli, notified in the Jarida on 16-11-1949, was the "law in force" as on 26.01.1950 and, as such, is saved by Article 372 of the Constitution of India; and the Notification dated 16.11.1949, issued under the Tribal Area Regulations, has been adopted by the Presidential Order dated 07.12.1950.

51. Article 372(1) of the Constitution of India provides for the continuance in force of "existing laws" which were in force in the territories of India immediately before the commencement of the Constitution. Article 366(10) defines an "existing law", inter alia, to mean any law, ordinance, order, rule or regulation passed or made before the commencement of the Constitution by any person having the power to make such law, ordinance, order, rule or regulation. There is little difference between the

expressions ''existing law'' and the ''law in force''. The definition of an "existing law" in Article 366(10), as well as the definition of an "Indian law" in Section 3(29) of the General Clauses Act, make this position clear. An order issued by an absolute monarch in an Indian State, which had the force of law, would be an "existing law" under Article 372(1) of the Constitution. (Madhaorao Phalke Vs. The State of Madhya Bharat, ; The Edward Mills Co. Ltd., Beawar and Others Vs. The State of Ajmer and Another,).

52. The words "laws in force in the territory of India", as used in Article 372(I), continue in force existing laws which existed not only in the Provinces of British India but in all Indian States. In the context of Article 372 what has to be seen is not whether the State of Hyderabad was a part of the territory of India before the commencement of the Constitution, but whether its territory has been included in India after its commencement. The same test applies to the old provinces or part of the provinces of British India. (The Director of Industries and Commerce, Government of Andhra Pradesh, Hyderabad and Another Vs. V. Venkata Reddy and Others, ; Janardan Reddy 1951 Cri.L.J. 391). The territories of the erstwhile Hyderabad State in its entirety, including its tribal areas, became the Part-B State of Hyderabad on the commencement of the Constitution of India on 26.01.1950. Therefore orders or regulations which had the force of law in Hyderabad State, immediately before the commencement of the Constitution on 26.01.1950, would not only be saved under Article 372(1) of the Constitution of India but would continue to remain in force until altered or repealed or amended by a competent legislature or other competent authority.

53. Are the Tribal Area Regulations, 1359 Fasli a "law in force" in the Territory of India immediately before the commencement of the Constitution of India? As noted hereinabove, the Tribal Areas Regulations, 1359 F were made by the Military Governor under the authority of a Firman issued by H.E.H. the Nizam dated 20.09.1948. In dealing with the question whether the orders (The Firman) issued by an absolute monarch (H.E.H. the Nizam) is a law or regulation having the force of law, or whether they constitute mere administrative orders, it is important to bear in mind that the distinction between executive orders and legislative commands is likely to be merely academic where the Ruler is the source of all power and that all the orders of the Ruler, however issued, must be regarded as law. There was no constitutional limitation upon the authority of the Ruler to act in any capacity he liked. He was the supreme legislature, the supreme judiciary, and the supreme head of the executive and all his orders, however issued, had the force of law and governed and regulated the affairs of the State including the rights of its citizens. As long as the Firman issued by HEH the Nizam of Hyderabad held the field, that alone governed and regulated the rights of its inhabitants though it could be annulled or modified by a later Firman at any time that the Nizam willed. (Madhaorao Phalke Vs. The State of Madhya Bharat, ; Ameer-un-Nissa Begum and Others Vs. Mahboob Begum and Others, ; Bengal Nagpur Cotton Mills Vs. Board of Revenue, Madhya

Pradesh and Others,).

54. As an absolute Ruler combined in himself the capacities of the supreme executive, judicial and legislative authorities in the State, any particular action of his might have been in one or other of these capacities. When the question arises, whether an order of a Ruler is a "law" or not, it becomes necessary to decide in what capacity the Ruler had acted when he made a particular order. All relevant factors must be considered before the question, whether an order passed by an absolute monarch represents a legislative act, is answered. The nature of the order, the scope and effect of its provisions, its general setting and context, the method adopted by the Ruler in promulgating legislative as distinguished from executive orders, will have to be examined before the character of the order is judicially determined. (State of Madhya Pradesh and Another Vs. Lal Bhargavendra Singh, ; Union of India (UOI) and Others Vs. Gwalior Rayon Silk Manufacturing (Weaving) Co. Ltd. and Another, ; Rajkumar Narsingh Pratap Singh Deo Vs. State of Orissa and Another,). While examining whether an order of a ruler is a Regulation having the force of law, the name given to the order is not decisive. Its character, content and purpose must be independently considered. (Madhaorao Phalke Vs. The State of Madhya Bharat,).

55. Section 92(1) of Government of India Act, 1935 is similar to Section 3 of the Tribal Area Regulations, 1359 F and Para 5(1) of Schedule V to the Constitution. It is useful to read these provisions in juxtaposition with each other.

56. The power of administration of Scheduled Areas, and to make Regulations for the governance of those areas, was given to the Governor or the Rajpramukh of the State under Para 5 of Schedule V of the Constitution of India. Under the Fifth Schedule, the Governor is the sole legislature for the "Scheduled Areas" and the Scheduled Tribes. He makes the Regulations after consulting the Tribes Advisory Council and submits them to the President for the latter''s assent. (Edwingson Bareh Vs. State of Assam and Others, ; Arka Vasanth Rao 1995(1) ALD 801). The power conferred on the Governor, under Para 5(2) of the Fifth Schedule, to apply laws is not a piece of delegated or conditional legislation. The Governor has full powers to make Regulations under para 5(2) which are laws and, just as Parliament can enact that a piece of legislation will apply to a particular State, similarly the Governor, under Para 5 of the Fifth Schedule, can apply specified laws to a Scheduled Area. Regulations are a valid piece of legislation emanating from the legislative authority in its plenitude of power, and there is no aspect of delegated or conditional legislation. The legislative power in clause (1) of Article 245 equally is "subject to the provisions of the Constitution" i.e. the V Schedule. Clause (1) of para 5 of Part B of the Fifth Schedule, applicable to Scheduled Areas, contains a non obstante clause. The executive power of the State is, therefore, subject to the legislative power under Clause 5(1) of the Fifth Schedule. Para 5(2) combines both legislative as well as executive power, Clause 5(2)(a) and (c) legislative power and

clause (b) combines both legislative as well as executive power. The word "regulation" in para 5(2)(b) is thus of wide import. (Samatha Vs. State of A.P. and Others,).

57. As noted hereinabove, Section 3 of the Tribal Area Regulations, 1359 F empowered the Government to direct that any Act, Regulation or Rule in force in Hyderabad State shall not apply to any notified Tribal Area or that it would apply to any notified Tribal area with such omissions and modifications as may be specified. As the power conferred u/s 3 of the Tribal Area Regulations is similar to Para 5(2) of the V Schedule, which is a law making power conferred on the Governor or the Rajpramukh of a State, the Tribal Area Regulations, 1359 F also has the "force of law".

58. The power to make Regulations embraces the utmost power to make laws and to apply laws. Applying law to an area is making Regulations which are laws. Further the power to apply laws is inherent when there is a power to repeal or amend any Act, or any existing law applicable to the area in question. Application of laws is one of the recognised forms of legislation. (Ram Kirpal Bhagat and Others Vs. The State of Bihar,). When the Governor makes Regulations in the exercise of his powers under Para 5(2) of the Fifth Schedule, (similar to Section 92(2) of the Government of India Act, 1935), and repeals or amends any Act of Parliament or the State Legislature, he exercises legislative powers. (Samatha Vs. State of A.P. and Others, ; (1947) 15 ITR 302 (Federal Court) ; and AIR 1949 175 (Federal Court)). Like Para 5(1) of the V Schedule, Section 3 of the Tribal Area Regulations, 1359 F also confers powers on the Government to apply laws to notified Tribal Areas. As application of laws is one of the recognised forms of legislation, the power conferred by Section 3 is a power to make laws and, consequently, the Tribal Area Regulations, 1359 Fasli must be held to be a "law in force" in the territory of India immediately before the commencement of the Constitution of India.

59. Section 92(2) of the Government of India Act, 1935 is similar to Section 4(1) & (2) of the Tribal Area Regulations 1359 F and Para 5(2) of Schedule V to the Constitution. It is useful to read these provisions in juxtaposition with each other.

60. The Notified Tribal Areas Rules, 1359 F, made in the exercise of the powers conferred u/s 4(1) & (2) of Tribal Areas Regulations, 1359 F, excludes the jurisdiction of Civil and Criminal Courts to notified tribal areas, and vests such powers in an Agent or the Tribal Panchayat. These Regulations and Rules provide for measures to be taken to protect the tribals in notified trial areas and prevent their exploitation by non-tribals. These measures were taken in the general interests of the deprived sections of society. Unlike an order passed to confer privileges on an individual, this Regulation and Rules were made for the benefit of the tribals, and has the "force of

law". The power to make Rules is conferred, ordinarily, by plenary legislation. Section 4 of the Tribal Areas Regulations, 1359 Fasli confers power on the Government to make Rules for the better administration of any notified tribal area in respect of tribals and of their relations with non-tribals. The Tribal Area Regulations was, therefore, a "law in force" in the erstwhile Hyderabad State.

61. A law must follow the customary form of law-making and must be expressed as a binding rule of conduct. There is generally an established method for the enactment of laws; and the laws, when enacted, have also a distinct form. An indication of the will of the Ruler meant to bind as a rule of conduct and enacted with some formality, either traditional or specially devised for the occasion, results in a "law". (Madhaorao Phalke Vs. The State of Madhya Bharat, ; Maharaja Shree Umaid Mills Ltd. Vs. Union of India (UOI),). Both the Tribal Area Regulations, 1359 F, and the Notified Tribal Areas Rules, 1359 F, were published in the Jarida (Gazette) on 16.11.1949. Legislation-both plenary and subordinate-must be published to make the general public aware of such laws. Where the law prescribes the mode of publication for the law to become operative, the law must be published in that mode alone. Where, however, the mode of publication of the "law" is not prescribed, such law should be published in some usual or recognised mode to bring it to the knowledge of all persons concerned. (State of Maharashtra Vs. Hans George, ; T. Narasimhulu and Others Vs. State of A.P. and Others,). Once the Rules are published in the Gazette they are deemed to have been published, and to be effective. (Subhash Ramkumar Bind @ Vakil and Another Vs. State of Maharashtra, : AIR 2003 SC 269; M.K. Rajasekhar v. Government of A.P. 2012 (6) ALD 390). Both the Tribal Area Regulations, 1359 F, and the Notified Tribal Area Rules, 1359 F, satisfy this test.

62. A law made by the succeeding States, the last of which is the Union of India (or the States referred in the First Schedule to the Constitution) is fully a law as understood in modern jurisprudence. A law which is to be set aside by such a law must, therefore, have been contemplated as law of the same kind. (State of Madhya Pradesh and Another Vs. Lal Bhargavendra Singh,). The A.P. Scheduled Areas Laws (Extension and Amendment) Regulations, 1963 was made by the Governor of Andhra Pradesh, under Para 5(2) of the V Schedule, after consulting the A.P. Tribes Advisory Council and with the assent of the President. The 1963 Regulations not only extended the Agency Rules and the 1959 Regulations to the Telangana Area of the State of Andhra Pradesh, but also repealed the Tribal Areas Regulations, 1359 Fasli which was, until then, in force in the Telangana Area of the State of Andhra Pradesh. As the 1963 Regulations, made under Para 5(2) of the V Schedule, has the force of law, the Tribal Area Regulations, 1359 Fasli which was repealed by the 1963 Regulations, was a "law in force" under Article 372(1) of the Constitution of India.

63. Under Article 372(1) of the Constitution of India, a "law in force" shall continue subject to the provisions of the Constitution. The words "subject to the other

provisions of the Constitution" mean that if there is an irreconcilable conflict between the pre-existing law and a provision or provisions of the Constitution, the latter shall prevail to the extent of that inconsistency. The inconsistency must be spelt out from the other provisions of the Constitution and cannot be built upon the supposed political philosophy underlying the Constitution. (The State of Uttar Pradesh Vs. Seth Jagamander Das and Others,). Though Article 244 and the V Schedule to the Constitution of India came into force on the commencement of the Constitution of India on 26.01.1950, the "Scheduled Areas" were declared more than ten months thereafter on 07.12.1950 by the Scheduled Areas (Part-B States) Order, 1950. Till then, there was no irreconcilable conflict between the notification dated 16.11.1949, issued under a pre-existing law, and an order made under the provisions of the Constitution of India. The Tribal Area Regulations, 1359 Fasli continued to remain the "law in force", in the tribal areas of the Part-B State of Hyderabad, in terms of Article 372(I) of the Constitution of India, even after 26.01.1950. The notification dated 16.11.1949, issued u/s 1(2) of the Tribal Area Regulations, 1359 Fasli, continued to remain in force till 07.12.1950 i.e., till the Scheduled Areas (Part-B States) Order was made by the President, and notified in the extraordinary Gazette dated 07.12.1950. The subject 23 villages were part of the tribal areas of Paloncha Taluq under the notification dated 16.11.1949, and were included as the "Scheduled Areas" of Paloncha Taluq in terms of para 13(i) of the Presidential Order dated 07.12.1950, notwithstanding their having been subsequently placed in Mulug Taluq for the purposes of the Hyderabad Land Revenue Act, 1317 Fasli. As it appears that the proposal sent to the Central Government, which formed the basis of the Presidential Order dated 07.12.1950, was that these 23 villages formed part of Paloncha taluq in Warangal District, and as Paloncha taluq in its entirety, (except for 6 villages), were declared as "Scheduled Areas" under Para 13(i) of the Scheduled Areas (Part-B States) Order, 1950, reference to the territorial divisions, in para 3 of the said Order, can only mean that these 23 villages, declared as Scheduled Areas under Para 13(i), would continue as such though they may have, thereafter, been relocated from Paloncha taluq to Mulug taluq of Warangal District.

64. The power which the President has, under Article 372(2) of the Constitution of India, to adapt is the legislative power of the State whose law is adapted, and that includes the power to repeal and amend any provision. (M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another,). By Clause 2 of Article 372, the President is authorised to adapt existing laws; but the application of the existing laws is not conditioned by the making of adaptations or modifications in that law by the President. (M.G. Desai and Another Vs. State of Bombay,). The Tribal Area Regulations, 1359 Fasli continued to remain in force till 01.12.1963, when it was repealed by the 1963 Regulations. Section 91(1) of the Government of India Act, 1935 is similar to Section 1(2) of the Tribal Area Regulations, 1359 F and Para 6(1) of the V Schedule to the Constitution of India. It is useful to read these provisions in

juxtaposition with each other.

65. Para 6(1) of the V Schedule to the Constitution of India confers powers exclusively on the President to declare different areas as "Scheduled Areas". The notification dated 16.11.1949, issued u/s 1(2) of the Tribal Areas Regulations, 1359 F remained in force till 07.12.1950 when the Scheduled Areas (Part-B States) Order, 1950 was made by the President of India. The notification dated 16.11.1949, issued in the exercise of the powers u/s 1(2) of the Tribal Area Regulations, 1359 F conferring notified tribal area status on the subject 23 villages, cannot be deemed to have been repealed by the notification dated 21.04.1950 issued not under the Tribal Area Regulations, 1359 F but in the exercise of the powers conferred under another enactment i.e., u/s 5(1) of the Hyderabad Land Revenue Act, 1317 Fasli. While the tribal areas, notified under the Tribal Areas Regulations, 1359 Fasli, did not automatically, and by itself, become "Scheduled Areas", as the power to declare an area as a "Scheduled area" vested only in the President under Para 6(1) of the V Schedule, and not on the Governor or the Rajpramukh, the notified tribal areas/agency tracts continued to remain as such till then. It is difficult to accept that, by a mere stroke of a pen and without any rhyme or reason, the elaborate exercise undertaken earlier to make Regulations and Rules for the protection of tribals, and to notify the tribal areas of the Hyderabad State wherein these Regulations and Rules would apply, would be made inapplicable to these 23 identified and notified tribal villages, that too by a notification issued under a completely different enactment (i.e., Hyderabad Land Revenue Act, 1317 Fasli).

66. Section 91(2) of the Government of India Act, 1935 is similar to Para 6(2) of the V Schedule to the Constitution of India. It is useful to read these provisions in juxtaposition with each other.

67. As the power to declare an area as a "Scheduled Area", and the power to declare that the whole or any specified part of a Scheduled area shall cease to be a "Scheduled Area" or a part of such area or to alter, by way of rectification of boundaries, any Scheduled Area vested exclusively in the President under Para 6(1) and 6(2)(a)&(b) of the V Schedule to the Constitution, and on no one else, HEH the Nizam, as the Rajpramukh of the Part-B State of Hyderabad, could not have been unaware, when he issued the notification dated 21.04.1950, that he lacked jurisdiction to declare that these 23 villages would cease to be tribal areas. Inclusion of the subject 23 villages, hitherto located in Paloncha Taluq, in the Mulug Taluq of Warangal District was, evidently, only for the purposes of the Hyderabad Land Revenue Act, 1317 Fasli, and not to direct that their notified tribal area status had ceased.

VI. Is the Judgment of this Court, in Koya Brahmanandam & Ors. V. The Special Deputy Collector (Tribal Welfare), Warangal (Judgment in W.P. No. 1413 of 1973 Dated 30.11.1973) A Precedent Binding on A Co-Ordinate Bench?

68. Sri S. Ramachandra Rao, Learned Senior Counsel appearing on behalf of the petitioners, would submit that a learned Single Judge of this Court, in Koya Brahmanandam v. the Special Deputy Collector (Tribal Welfare), Warangal [1], had declared that the 14 villages therein, which are among the 23 villages of Mangapet mandal, were not notified in the Presidential Order and were, therefore, not part of the agency tracts; a Division Bench, in Special Deputy Collector (Tribal Welfare) v. Koya Brahmanandam and others[2], had affirmed the judgment of the Learned single judge in Koya Brahmanandam[1]; the said judgment has attained finality and is binding on this Court; and no other relief, contrary to the final judicial dicta and ratio, can be sought or granted.

69. It is contended, on behalf of the respondents, that the issue in Koya Brahmanandam31 related to the show cause notices issued under Rule 7(2) of the Schedules Areas Land Transfer Rules, and the subject lands mentioned therein; the said judgment has no application to the facts of the present case; the Tribal Areas Regulation, 1359 F was not brought to the notice of this Court either in W.P. No. 1413 of 1973 or in W.A. No. 486 of 1974, though it is the "law in force" under Article 372(1) of the Constitution of India; the judgment in W.P. No. 1413 of 1973, or W.A. No. 486 of 1974, do not bind this Court as the "law in force" or the "existing law" has neither been referred to, nor was it discussed, therein; the said judgment is Per-incuriam; and the principle of Sub-Silentio must be applied.

70. W.P. No. 1413 of 1973 (Koya Brahmanandam[1]) was filed by 138 individuals challenging a notice, issued under Rule 7(2) of the A.P. Scheduled Areas Land Transfer Rules, 1969, calling upon them to show cause why they should not be ejected from the immoveable properties referred to therein, and the immoveable properties restored to the transferors, as the transfers were in contravention of Section 3(1) of the 1959 Regulations. The petitioners sought a mandamus to the respondent-Special Deputy Collector (Tribal Welfare), Warangal to forebear from applying the provisions of the 1959 Regulation, as amended by Regulation I of 1970, or the Rules made thereunder to the immovable properties situated in the villages of 1) Rajupet, 2) Ramachandrunipeta, 3) Mulluru, 4) Narasimhasagar, 5) Kathigudem, 6) Chunchupally, 7) Narsapoor, 8) Timmapet, 9) Cherpally, 10) Komatipally, 11) Tondyala Laxmipur, 12) Kamalapur, 13) Domeda and 14) Podmoor (Mangapet) in Mulug Taluq of Warangal District.

71. In his order, in Koya Brahmanandam31, a learned Single Judge of this Court held that an "agency tract" is defined in Section 2(1) of the 1959 Regulations as meaning the area in the districts named thereunder, declared from time to time as Scheduled Areas by the President under sub-paragraph (1) of Paragraph 6 of the Fifth Schedule to the Constitution; the show-cause notice given to the petitioners was with

reference to the lands owned by them in Mulug taluq of Warangal District; while reorganizing districts and taluqs, the Government, by way of a notification dated 21.04.1950 published in the extra-ordinary gazette dated 23.04.1950, notified 218 villages in Mulug taluq; the Presidential notification, as contemplated in Section 3(1) of the 1959 Regulations, was issued on 07.12.1950 notifying the scheduled areas in Part "B" States; the villages in which the petitioners owned lands, with regard to which a show-cause notice had been issued, were not those notified in the Presidential Order; they were, therefore, not part of the agency tracts as contemplated under the 1959 Regulations; Section 3(1) of the 1959 Regulations is not applicable to them; and no show-cause notice could be given to them for the lands, in their possession, in those villages. The matter was carried in appeal. The order of the Division Bench, in Special Deputy Collector (Tribal Welfare), Warangal v. Koya Brahmanandam[2], is cryptic and reads as under:-

We see no grounds to entertain this Writ Appeal. The Writ Appeal is dismissed.

72. The order of the Division Bench, in Special Deputy Collector (Tribal Welfare), Warangal v. Koya Brahmanandam[2] is bereft of reasons. Any declaration or conclusion, arrived at without being preceded by any reason, cannot be deemed to be the declaration of law or authority of a general nature binding as a precedent. (State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, ; B. Shama Rao Vs. The Union Territory of Pondicherry,). The view, if any, expressed without analysing the statutory provision cannot be treated as a binding precedent. (N. Bhargavan Pillai (Dead) by Lrs. and Another Vs. State of Kerala,). A decision, which is neither founded on reasons nor it proceeds on a consideration of an issue, cannot be deemed to be a law declared to have a binding effect. That which escapes in the judgment without any occasion is not the ratio decidendi. A decision is binding not because of its conclusions but in regard to its ratio, and the principles laid down therein''. Any declaration or conclusion preceded without any reason is not a declaration of law or authority of a general nature binding as a precedent. (Jaisri Sahu Vs. Rajdewan Dubey and Others, ; Municipal Corporation of Delhi Vs. Gurnam Kaur, ; B. Shama Rao Vs. The Union Territory of Pondicherry, ; State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another,).

73. It is no doubt true that the judgment of the Learned Single Judge, in Koya Brahmanandam[1], was confirmed in appeal and, as such, has attained finality. A particular decision, which has become final and binding between the parties, cannot be set at naught and, so far as the parties are concerned, they will always be bound by the said decision. (Supreme Court Employees'' Welfare Association and Others Vs. Union of India (UOI) and Another,). Such orders bind the parties in a subsequent litigation or before the same Court in the subsequent stage of the proceedings. (Barkat Ali and Others Vs. Badrinarain,). The order in Koya Brahmanandam[1] binds the petitioners therein and the Special Deputy Collector, Warangal who was the sole respondent in the said Writ Petition.

74. A decision of a competent Court, on a matter in issue, may be res judicata in another proceeding between the same parties. The previous decision, on a matter in issue, alone is res judicata. The reasons for the decision are not res judicata. A matter in issue between the parties is the right claimed by one party and denied by the other, and the claim of right from its very nature depends upon proof of facts and application of the relevant law thereto. A pure or abstract question of law, unrelated to facts which give rise to a right, cannot be deemed to be a matter in issue. When it is said that a previous decision is res judicata, it is meant that the right claimed has been adjudicated upon and cannot again be placed in contest between the same parties. A previous decision of a competent Court on facts which are the foundation of the right, and the relevant law applicable to the determination of the transaction which is the source of the right, is res judicata. A decision on an issue of law will operate as res judicata, in a subsequent proceeding between the same parties, if the cause of action of the subsequent proceeding be the same as in the previous proceeding, but not when the cause of action is different. (Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy,). The matter in issue, in Koya Brahmanandam[1], was the notice issued by the Special Deputy Collector (Tribal Welfare), Warangal under Rule 7(2) of the A.P. Scheduled Areas Land Transfer Rules, 1969, calling upon the petitioners therein to show cause why they should not be ejected from the immoveable properties mentioned therein. In so far as the notice issued under Rule 7(2) and the immoveable properties mentioned therein are concerned, the judgment in Koya Brahmanandam[1] is binding inter-parties as it was a matter in issue in the said Writ Petition.

75. The rule of conclusiveness of judgments, as to the points decided earlier of fact, or of law, or of fact and law, in every subsequent proceeding between the same parties is the rule of res judicata. A judgment of a Court of concurrent jurisdiction directly upon a point creates a bar as regards a plea, between the same parties in some other matter in another Court, where the said plea seeks to raise afresh the very point that was determined in the earlier judgment. (Swamy Atmananda Vs. Swami Bodhananda and Others, ; Ishwar Dutt Vs. Land Acquisition Collector and Another, . Issues which have been concluded inter-parties cannot be raised again in proceedings inter-parties. (State of Haryana Vs. State of Punjab and Another,). The doctrine of res judicata has no application to the present case as neither the petitioners nor the respondents in these two Writ Petitions were parties to the judgment in Koya Brahmanandam[1]. The "issue" in these two Writ Petitions is whether reservations can be provided to the offices of Sarpanches in the subject Gram Panchayats, treating them as Scheduled Areas. While the judgment, in Koya Brahmanandam[1], may not be conclusive, on the application of the doctrine of res-judicata, the question which necessitates examination is whether it constitutes a binding precedent?

76. Quotability as ''law'' applies to the principle of a case, its ratio decidendi. The only thing in a Judge''s decision binding as an authority upon a subsequent Judge is

the principle upon which the case was decided. Statements which are not part of the ratio decidendi are not authoritative. Without an investigation into the facts, it cannot be assumed whether a similar direction must or ought to be made. (Municipal Corporation of Delhi Vs. Gurnam Kaur,). It is not everything said by a Judge, while giving judgment, that constitutes a precedent. The only thing in a Judge''s decision binding a party is the principle upon which the case is decided. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio, and not every observation found therein nor what logically follows from the various observations made in the judgment. The enunciation of the reason or principle, on which a question before a court has been decided, is alone binding as a precedent. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case, or is put in issue, would constitute a precedent. It is the rule deductible from the application of the law to the facts and circumstances of the case which constitutes its ratio decidendi. (Union of India (UOI) and Others Vs. Dhanwanti Devi and Others, ; State of Orissa and Others Vs. Md. Illiyas, ; ICICI Bank Ltd. and Another Vs. Municipal Corporation of Greater Bombay and Others, ; The State of Orissa Vs. Sudhansu Sekhar Misra and Others,).

77. A precedent ceases to be a binding precedent when it is sub silentio or when it is rendered per incuriam. (Commissioner of Income Tax Vs. B.R. Constructions,). The Latin expression per incuriam means through inadvertence. (Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others,). ''Incuria'' literally means ''carelessness''. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The ''quotable in law'' is avoided and ignored if it is rendered ''in ignoratium of a statute or other binding authority''. (Young v. Bristol Aeroplane Co. Ltd (1944) KB 718). This principle has been accepted, approved and adopted by the Supreme Court while interpreting Article 141 of the Constitution of India which embodies the doctrine of precedents as a matter of law. (State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another,). A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. A judgment delivered without argument and without reference to the relevant statutory provisions is not binding. (Municipal Corporation of Delhi Vs. Gurnam Kaur,). Where by obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, it may not have the sway of a binding precedent. (Mamleshwar Prasad and Another Vs. Kanhaiya Lal (Dead) through L. Rs., ; Morelle v. Wakeling (l955) 2 QB 379).

78. The Tribal Area Regulations, 1359 Fasli, the Notified Tribal Areas Rules, 1359 Fasli, the notification dated 16.11.1949 (issued u/s 1(2) of the Tribal Area Regulations, 1359 F), and that the "Regulations" was the "Law in force" immediately before the commencement of the Constitution in view of Article 372(I) of the

Constitution of India, was not brought to the notice of the Learned Single Judge in Koya Brahmanandam[1]. The Learned Judge was not even made aware that these 23 villages were notified as tribal areas under the notification dated 16.11.1949 or that the Tribal Area Regulations, 1359 F and the Rules and notifications issued thereunder, continued to remain in force even after the commencement of the Constitution of India. The judgment of this Court in Koya Brahmanandam[1] does not, therefore, constitute a precedent binding on a co-ordinate bench. The mere fact that, after the judgment in Koya Brahmanandam, these 23 villages were treated as non-Scheduled areas till 2006 is of little consequence as orders, if any, passed dehors the Rules is not binding, notwithstanding the orders being implemented. (Union of India (UOI) and Others Vs. S.K. Saigal and Others,).

79. Another exception, to the rule of precedents, is the rule of sub-silentio. "A decision passes sub-silentio, when the particular point of law involved in the decision is not perceived by the Court or present to its mind." (Salmond on Jurisprudence 12th Edn., p.153). A decision passes sub silentio when the particular point of law involved in the decision is not perceived by the Court or present to its mind. The Court may consciously decide in favour of one party because of point A which it considers and pronounces upon. It may be shown, however, that logically the Court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the Court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio, and the Court is not bound by the previous decision. (Municipal Corporation of Delhi Vs. Gurnam Kaur,). As these 23 villages were part of the notified tribal areas of Paloncha Taluq, and were not among the excepted six villages, both in the notification dated 16.11.1949 and under Para 13(i) of the Scheduled Areas (Part-B States) Order, 1950, they formed part of the Scheduled Areas of the Part-B State of Hyderabad, notwithstanding the notification dated 21.04.1950 issued u/s 5(1) of the Hyderabad Land Revenue Act, 1317 Fasli. The Learned Single Judge, in Koya Brahmanandam[1], held that, in view of the notification dated 21.04.1950 whereby these 23 villages were added to Mulug Taluq, they did not form part of the Scheduled areas as they were not among the villages in Mulug Taluq listed under Para 10 of the Scheduled Areas (Part-B States) Order, 1950. The attention of the Learned Judge was, however, not drawn to the fact that, by virtue of the notification dated 16.11.1949 issued under the Tribal Areas Regulation, 1359 Fasli, these 23 villages were among the notified tribal areas of Paloncha Taluq and became "Scheduled Areas" under Para 13(i) of the Scheduled Areas (Part-B States) Order, 1950. If a point had to be decided by the earlier Court before it could make the order which it did and, nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it is not binding and need not be followed. Precedents sub silentio and without argument are of no moment. (Municipal Corporation of Delhi

Vs. Gurnam Kaur, ; Lancaster Motor Company (London) Ltd. v. Bremith Ltd. (1941) 2 All ER 11). The Learned Judge could have held that these 23 villages were not "Scheduled Areas", under Para 13(i) of the Scheduled Areas (Part-B States) Order, 1950 only if he had held that, by the notification dated 21.04.1950, these 23 villages were denuded of the notified tribal area status conferred on them earlier by the notification dated 16.11.1949, or that the notification dated 21.04.1950 superseded the notification dated 16.11.1949. No such finding has been recorded by the Learned Judge in Koya Brahmanandam31. Observations in a judgment without any argument and without reason do not form part of the ratio; cannot be treated as having the weight of authority or as constituting a binding precedent; and are to be regarded as having been passed sub-silentio. (Municipal Corporation of Delhi Vs. Gurnam Kaur, ; Bengal Club Limited Vs. Susanta Kumar Chowdhury,). ''Precedents sub-silentio and without argument are of no moment''.

80. In the determination of a question of fact no application of any principle of law is required in finding either the basic facts or arriving at the ultimate conclusion. In a mixed question of law and fact, the ultimate conclusion has to be drawn by applying principles of law to basic findings. (Smt. Krishnawati Vs. Shri Hans Raj, ; Meenakshi Mills, Madurai Vs. The Commissioner of Income Tax, Madras,). The inference from facts would be a question of fact or of law according to whether the point for determination is one of pure fact or a mixed question of law and fact. (Meenakshi Mills, Madurai Vs. The Commissioner of Income Tax, Madras,). Where the finding is one of fact, the fact that it is an inference from other basic facts will not alter its character as one of fact. (I.C.I. (India) Private Ltd. Vs. The Commissioner of Income Tax, West Bengal, ; Meenakshi Mills, Madurai Vs. The Commissioner of Income Tax, Madras, ; Damadilal and Others Vs. Parashram and Others,). In Koya Brahmanandam[1], the Learned Single Judge held that, in the notification dated 21.04.1950, these 23 villages formed part of Mulug Taluq of Warangal District; in the Scheduled Areas (Part-B States) Order, 1950, while several villages of Mulug Taluq were shown in para 10 as Scheduled Areas, these 23 villages were not among them; and, therefore, these 23 villages do not form part of the Scheduled Areas of the Part-B State of Hyderabad. This conclusion of the Learned single Judge is a finding of fact, and not of law. A finding of fact, even when it is an inference from other facts found on evidence, is not a question of law. (Pares Nath Thakur Vs. Mohani Dasi and Others, ; Meenakshi Mills, Madurai Vs. The Commissioner of Income Tax, Madras, ; Damadilal and Others Vs. Parashram and Others,). What constitutes a binding precedent is the principle of law laid down in an earlier decision, and not the determination of a question of fact. Even otherwise this finding, that the 23 villages were not part of the Scheduled Areas, was made in ignorance of the Tribal Area Regulations, 1359 F, and the Rules and notification dated 16.11.1949 issued thereunder. Such a finding is not conclusive except inter-parties. If a finding of fact is arrived at ignoring important and relevant evidence, the finding is bad in law. (Damadilal and Others Vs. Parashram and Others, ; Radha Nath Seal (dead) by his

legal representatives Vs. Haripada Jana and Others,). What is binding is the ratio of the decision, and not any finding of fact. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court, that forms the ratio and not any particular word or sentence. (Director of Settlements, Andhra Pradesh and Others Vs. M.R. Apparao and Another,).

81. The judgment of this Court, in Koya Brahmanandam[1], does not constitute a precedent binding on a co-ordinate bench.

VII. Was the Presidential Order Dated 07.12.1950 Made on the basis of the Notification Dated 16.11.1949 Wherein these 23 Villages were Treated as Part of Paloncha Taluq or was it Made on the basis of the Notification Dated 21.04.1950 that these 23 Villages Formed Part of Mulug Taluq of Warangal District?

82. Sri S. Ramachandra Rao, Learned Senior Counsel appearing on behalf of the petitioners, would submit that after the advent of the Constitution, irrespective of the historical, factual or legal situation, no land or area can be declared or recognized as a ''Scheduled Area'' unless it is so notified explicitly by a Presidential Order as mandated by paragraph 6 of the Fifth Schedule to the Constitution; no one can create a Scheduled Area by implication, or by a process of interpretation; and this Court has no power to declare any area as a'' Scheduled Area'' as, under the Constitution, this power is exclusively conferred initially on the President, and later on Parliament alone.

83. It is contended, on behalf of the respondents, that certain areas were declared to be the "Scheduled Areas" within the State, as specified under Para (13) of the "Part-B" of the Constitutional Order No. 26 dated 07.12.1950; once certain areas have been declared as Scheduled Areas by a Presidential Order, the status of such areas cannot be altered except by a process of de-notification; Para 6(2)(a) of the Fifth Schedule requires a specific order to be passed by the President for certain areas to cease to be a scheduled area; in so far as the subject 23 villages are concerned, no specific order has, so far, been passed by the President of India deleting these areas from the list of "Scheduled Areas"; and, in the present case, the "law in force" under Article 372, i.e. the notification dated 16.11.1949, issued under the Tribal Area Regulations 1359 Fasli, has been adopted by the Presidential Order dated 7th December 1950.

84. The power conferred on Parliament, under Para 7 in Part-D of the Vth Schedule to the Constitution of India, is to amend the V Schedule itself. The power to declare an area as a "Scheduled Area", or to hold that a Scheduled Area or a part thereof has ceased to be a "Scheduled Area", vests exclusively in the President under Para 6(1) & (2) of the V Schedule to the Constitution of India. Neither the Executive Government nor the State Legislature, much less this Court, can declare an area to be a "Scheduled Area". While the notified tribal area status conferred on the subject 23 villages, under the Tribal Area Regulations, 1359 Fasli, continued to remain in force

even after the commencement of the Constitution, it did not, automatically, make these "notified tribal areas" as "Scheduled Areas", as the power to declare an area (be it a tribal area, an agency tract or an area in the plains) as a "Scheduled Area" has been conferred only on the President, and none else.

85. If the Scheduled Areas (Part-B States) Order dated 07.12.1950 was issued on the basis that the subject 23 villages formed part of Paloncha taluq of Warangal District, they must be held to be Scheduled Areas as they are not among the six excluded villages of Paloncha taluq, referred to in Para 13(i) of the Presidential Order dated 07.12.1950. If, on the other hand, these 23 villages were treated as part of Mulug taluq of Warangal District by the President, while making the Scheduled Areas (Part B States) Order, 1950, then, as they are not among the villages of Mulug taluq of Warangal District specified therein, they must be held not to form part of the "Scheduled Areas".

86. The moot question, therefore, is whether the proposal made by the Part-B State of Hyderabad to the Government of India, which resulted in certain of its areas being included in the Scheduled Areas (Part B States) Order, 1950, was that these 23 villages formed part of Paloncha taluq of Warangal District or that they were part of Mulug taluq of Warangal District?

87. The Director, Tribal Welfare, by his letter dated 05.12.2003, (reliance on which has been placed on behalf of the petitioners and a copy thereof has been filed along with the Writ Petition), informed the District Collector, Warangal that a Member and Advisor of the National Commission on Scheduled Areas and Scheduled Tribes had visited Hyderabad from 16.11.2003 to 19.11.2003; during their meeting they had observed that the erstwhile Hyderabad Government had sent proposals to the Government of India for issue of a Presidential Notification, as required under sub-para (1) of Para 6 of the Fifth Schedule to the Constitution of India, to include the 23 villages as Scheduled villages in regard to Paloncha taluq when the entire (Paloncha Samsthan) Paloncha Taluq was in Warangal District; in the meanwhile, due to the abolition of Jagirs, re-organization of Taluqs took place which was given effect from 06.05.1950 vide Government of Hyderabad Notification No. 21 dated 21.04.1950, published in extraordinary Gazette No. 47 dated 23.04.1950; as a result thereof the said 23 Samsthan villages, which were part of Paloncha taluq, came under Mangapet Circle of Mulug Taluq of Warangal district on the ground of administrative convenience; later on reorganization of taluqs took place, and the Presidential Order dated 07.12.1950 was issued which was called as "The Scheduled Areas (Part-B States) Order, 1950" based solely on the proposals sent much earlier by the erstwhile Hyderabad Government.

88. In the counter-affidavit filed before the Division bench of this Court, in Eppala China Venkateswarlu and Others Vs. Secretary to Government, Social Welfare (F) Department and Others, (W.P. No. 14068 of 2006), the Secretary, Tribal Welfare Department, Government of Andhra Pradesh stated that the 23 villages of

Mangapet Mandal were declared as scheduled villages, as per the notification issued by the President of India, which was published in Gazette No. 90, dated 7-12-1950; at the time of issuance of notification dated 7-12-1950, the villages in question were shown in Paloncha Taluq of Warangal District; in the process of reorganization of districts, 204 villages in Paloncha Taluq were included in Khammam District and the 23 villages, which are subject-matter of the writ petition, remained in Warangal District, and the same were tagged to Mulug Taluq; after formation of Mandals, these villages were included in Mangapet Mandal and the same form part of the Scheduled Areas; it is true that, while issuing the notification by the President of India on 7-12-1950, 218 villages in Mulug (T) were declared as scheduled villages; however 227 villages in Paloncha (T) have also been declared as schedule villages; in order to decide whether any village/area is a "Scheduled Area", the authorities are not concerned with reorganization of areas by the State or local Government, and have to look into the notification issued by the President of India; it is immaterial whether any such area/village has been tagged to any District/Mandal; it is an admitted fact that all these 23 Revenue villages have been shown in the Palvancha (T) in Warangal District at the time of issuing the notification by the President of India; and, therefore, it is immaterial whether these areas/villages were subsequently tagged to the Mangapet Mandal or Mulug (T). Even in the counter-affidavits, filed in these two Writ Petitions, the respondents reiterate that the proposals to include these 23 villages, which formed part of Paloncha Taluq of Warangal District, as "Scheduled Areas" in the Presidential order was sent much prior to the notification dated 21.04.1950 issued u/s 5(1) of the Hyderabad Land Revenue Act, 1317 Fasli.

89. From the letter of the Director Tribal Welfare dated 05.12.2003, the counter-affidavit filed by the State Government in Eppala China Venkateswarlu and Others Vs. Secretary to Government, Social Welfare (F) Department and Others, , and the counter-affidavits filed to the present Writ Petitions, it does appear that proposals were sent by the erstwhile Hyderabad Government to the Government of India, for inclusion of certain villages as "Scheduled Areas" in the Presidential order to be made under Para 6 of the Fifth Schedule to the Constitution of India, much before the notification dated 21.04.1950 was issued by the Government of Hyderabad u/s 5(1) of the Hyderabad Land Revenue Act, 1317 Fasli; and as if these 23 villages formed part of Paloncha taluq. If the proposal submitted by the Part-B State of Hyderabad to the Central Government, for the President to declare certain areas as "Scheduled Areas", was that these 23 villages were part of Paloncha taluq, they would then form part of the "Scheduled Areas" of the then Part-B State of Hyderabad as they are not among the six excluded villages of Paloncha taluq in para 13(i) of the Scheduled Areas (Part-B States) Order, 1950.

90. The respondents contend that, both in the Presidential Order dated 07.12.1950 and in the notification dated 16.11.1949 issued under the Tribal Area Regulation 1359 Fasli, the list of villages are the same and the names of villages appear in the

same order. They have furnished a comparative chart of the two lists in their counter-affidavit. The petitioners would submit to the contrary, and contend that certain villages in Mahaboobnagar District were not notified as Scheduled Areas in the notification dated 16.11.1949, but were notified as "Scheduled Areas" in the Presidential Order dated 07.12.1950. The petitioners have chosen not to array the Union of India or its officials as respondents in these Writ Petitions. This Court is, thereby, disabled from calling for the records from the Central Government to ascertain the contents of the proposals, submitted by the Part-B State of Hyderabad, which formed the basis for the President to declare certain of its areas as Scheduled Areas in the Scheduled Areas (Part-B States) Order, 1950. While the proceedings of the Director of Tribal Welfare dated 05.12.2003, the counter-affidavit filed by the State Government before the Division Bench in Eppala China Venkateswarlu and Others Vs. Secretary to Government, Social Welfare (F) Department and Others, , and the counter-affidavits filed in these two Writ Petitions, may not be conclusive, the onus was on the petitioner to satisfy this Court that it was the notification dated 21.04.1950 which formed the basis for the President declaring certain areas, in the Part-B State of Hyderabad, as "Scheduled Areas" under the Scheduled Areas (Part-B States) Order, 1950 dated 07.12.1950. Ordinarily, the burden of proof lies on the party which affirms a fact, and not on the party which denies it. (Dr. N.G. Dastane Vs. Mrs. S. Dastane,). Where the issue is one of fact, the onus of proving it lies on the petitioner. The burden of proving material facts must be discharged by adducing positive, satisfactory and cogent evidence. If the petitioner is unable to adduce such evidence the burden is not discharged. (Santosh Yadav Vs. Narender Singh,). Except to rely on the judgment of this Court in Koya Brahmanandam[1], the petitioners have failed to discharge the burden to prove that the assertion in the proceedings of the Director of Tribal Welfare dated 05.12.2003, the averments in the counter-affidavit filed before the Division Bench in Eppala China Venkateswarlu and Others Vs. Secretary to Government, Social Welfare (F) Department and Others, , and the submissions in the counter-affidavits filed in these two Writ Petitions, that the proposals were sent to the Government of India long before the notification dated 21.04.1950, were incorrect. This Court would not be justified in readily accepting the unsubstantiated contention that the notification dated 21.04.1950 formed the basis of the Presidential Order dated 07.12.1950, more so when it would deprive the Scheduled Tribes of the protection conferred by the Agency Rules, and the Land Transfer Regulations, regarding transfer of land and resolution of inter-se disputes between them and the non-tribals.

91. As a consequence of the order of this Court, in Koya Brahmanandam31, the tribals of these 23 villages have not only been denied the protection conferred on them, hitherto, by the Tribal Area Regulations 1359 Fasli, and the Notified Tribal Area Rules made thereunder, they have also been deprived of the benefit which they are entitled to under the Agency Rules and the Scheduled Areas Land Transfer Regulations, 1959 as amended by Regulation 1 of 1970. The very object of including

these 23 villages in the list of notified tribal areas, by the notification dated 16.11.1949, was to protect the tribals of these villages from the wiles of money lenders, and from being exploited by the non-tribals. The jurisdiction exercised by this Court, under Article 226 of the Constitution of India, is only in furtherance of larger public interest. (Master Marine Services Pvt. Ltd. Vs. Metcalfe and Hodgkinson Pvt. Ltd. and Another, ; Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others,). This Court would refrain from interference, in the exercise of its discretionary jurisdiction under Article 226 of the Constitution of India, save larger public interest. A writ of mandamus and a writ of certiorari are discretionary, unlike a writ of habeas corpus which can be sought as a matter of right. One of the principles inherent is that the exercise of discretionary power should be for the sake of justice and, if interference would result in greater harm to society, then this Court may refrain from exercising the power. (State of Maharashtra and Others Vs. Prabhu,). One of the limitations imposed by this Court, on itself, is that it would not exercise jurisdiction unless substantial injustice has ensued or is likely to ensue. It would not allow itself to be turned into a Court of appeal to set right supposed errors of law which do not occasion injustice. (Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya,). Even if a legal flaw might be electronically detected, this Court would not interfere save manifest injustice. (Rashpal Malhotra Vs. Mrs Satya Rajput and Another, ; Council of Scientific and Industrial Research and Another Vs. K.G.S. Bhatt and Another,). Larger public interest would be served only if this Court were to refrain from interference as the scheduled tribes would, thereby, not only have a greater say in the Panchayat Raj institutions (on account of reservations being provided in their favour u/s 242D of A.P. Panchayat Raj Act, 1994), but would also be conferred protection under the Agency Rules and the Land Transfer Regulations.

VIII. Consequences of these 23 Villages Being Treated as Non-Scheduled Areas, Pursuant to the Judgment of this Court in Koya Brahmanandam & Ors. V. The Special Deputy Collector (Tribal Welfare), Warangal (Judgment in W.P. No. 1413 of 1973 Dated 30.11.1973), for more than 3 Decades upto the Year 2006:

92. Sri S. Ramachandra Rao, Learned Senior Counsel appearing on behalf of the petitioners, would submit that the Government of India, the State Government, the Tribal Welfare Department, the Revenue authorities, the Zilla Parishad officials and the Director of Tribal Welfare had, even till the year 2006, treated these 23 villages as non-scheduled areas; the request of the State Government, to declare these villages as "Scheduled Areas" was rejected by the Government of India, vide proceedings dt. 22.3.1979, as indicated by the Scheduled Areas and Scheduled Tribes Commission (Bhuria Commission) report dated 16.7.2004; the State Government submitted proposals to the Government of India for inclusion of these 23 villages in the list of Scheduled Areas, but these 23 villages are not yet included therein; by letters dated 8.2.1994, 3.4.1994, 28.5.1999,12.7.1999, 11.10.1999, 18.12.1999, 18.1.2000, 20.7.2000, 14.8.2000, 5.9.2000, 17.10.2000 and 7.12.2000, the

District Collector, Warangal, while referring to the proposal submitted by the State Government, had requested them to communicate orders, if any, passed by the Government of India for inclusion of the 23 villages in the list of "Scheduled. Areas" at the earliest; the Director of Tribal Welfare, by proceedings dt. 5.12.2003, had informed the District Collector, Warangal that these 23 villages were not included in the list of Scheduled Areas; the Director of Tribal Welfare had also requested the District Collector to send proposals for inclusion of these villages if they merit inclusion in the Scheduled Areas; from the promulgation of the Presidential Order dated 7.12.1950 till 2006, these 23 villages were, throughout, treated as non Scheduled Areas; and elections to the panchayats of Mangapet Mandal were conducted earlier treating these 23 villages as non Scheduled Areas.

93. It is contended on behalf of the respondents that, in the absence of a specific order denuding or deleting the tribal areas status conferred way back in the year 1949 on these 23 villages, it cannot be said that their "Scheduled Area" status has come to an end; reference, in D.O. Rc. No. 103/2003/C(1)/TRI dated 05-12-2003, to the Government of India turning down the proposal of the State Government to include these 23 villages in the Scheduled Areas, was because the Tribal Area Regulations, 1359 Fasli, which was the law in force during the relevant period, appears not to have been brought to the notice of the Government of India.

94. It is no doubt true that the District Collector, Warangal had, by his letter dated 20.07.2000, requested the Secretary to the Government, Social Welfare (F) Department, to communicate orders, if any, passed by the Government of India for inclusion of 23 villages of Mangapet Mandal in the list of "Scheduled Areas", at the earliest. Again, by letter dated 17.10.2000, the District Collector, Warangal renewed his request. A similar request was made again on 07.12.2000. A Scheduled Areas and Scheduled Tribes Commission was constituted, under Article 339(1) of the Constitution of India, under the chairmanship of Sri Dileep Singh Bhuria on 18th July, 2002. The Bhuria Commission submitted its Report in three Volumes-Volume I dealing with the national scene in chapters, Volume II relating to individual States, and Volume III containing copies of relevant documents, papers etc. Paras 5.2 to 5.5 of Vol. II are relevant and read as under:-

5.2. Omission in the notification of Scheduled Area-There is confusion about the non-inclusion of 23 villages of Warangal district in the Scheduled Areas. Non-tribals were issued show-cause notice under Andhra Pradesh Areas Land Transfer Regulation (APALTR) for eviction from the lands under their control. The non-tribals approached the High Court. The High Court ruled (W.P. No. 1413 of 1973, dt. 13th November, 1973) that "The Presidential Notification as contemplated in Section 3(1) of the Regulation was notified on 7th December, 1950 notifying the Scheduled Areas in part ''B'' states. The villages in which the petitioners'' own lands, with regard to which show-cause notice has been issued, are not those notified in the Presidential Order. Therefore, they are not part of the Agency tracts as contemplated under the

Regulation. It is further clear that Section 3(1) of the Regulation is not applicable to them and no show-cause notice as has been done can be given to them with regard to the lands in their possession in these villages. The impugned show-cause notice has therefore been given without jurisdiction by the Special Deputy Collector, (Tribal Welfare) Warangal." In this connection, it should be mentioned that the proposals were turned down by the Govt. of India, Ministry of Home Affairs, who directed to take up inclusion of those villages in general revision vide their D.O. letter No. 12020/4(1) 76-SCI-III, dt. 22.3.1979." In the meantime, the State Govt. has proposed to the Govt. of India inclusion of 790 villages in the Scheduled Areas. The Commission pointed out to the State Govt. that inclusion of above mentioned 23 villages has not been done in the proposal containing 790 cases sent to the Govt. of India. The State Govt. has agreed in principle to correct this omission. The list of these 23 villages is given at Appendix-VI.

5.3. The Commission however feels that the interest of the tribals living in these 23 villages in terms of protection against land alienation and other protective measures has been denied since 1950 for no fault of theirs. This is a matter, which should have been settled between the State and the Central Governments and therefore, Commission recommends that the case of 23 villages of Warangal district should not be tagged with the proposed inclusion of other villages into the Scheduled Areas and examined separately for their inclusion in the Scheduled Areas forthwith.

5.4. Another point which came to the notice of the Commission was that 6 villages, namely Palonchha, Borgampad, Ashwaraopet, Dammapet, Kukunur and Nelipaka of Warangal district were excluded from the Notified Area Regulation of Hyderabad State. These villages now form part of Khammam district and are like islands in the reserved legislative and parliamentary constituency. The "Scheduled Area" concept embraces an area approach where Scheduled Tribes are residing since times immemorial and exclusion of such villages in which Scheduled Tribes may not be in large numbers is against the spirit of the Scheduled Areas concept. The Commission therefore recommends that these 6 villages should be included in the Scheduled Areas to protect the interests of tribals and the character of the Scheduled Areas.

5.5. The Commission further recommends that while notifying Scheduled Areas, Govt. of India should also clarify that Scheduled Area means villages, towns, cities, Blocks, Tehsil and Districts (as the case may be), in their entirety inclusive of revenue and forest lands under the control of State Govt., the local bodies and the Panchayati Raj Institutions.....

(emphasis supplied)

95. The Director, Tribal Welfare, by his proceedings dated 05.12.2003, informed the District Collector, Warangal that, after issuance of the Presidential Order, proceedings under the 1959 Regulations were initiated and a show-cause notice was issued to the non-tribals for eviction; the High Court, by its order in W.P. No. 1413 of

1973 dated 30.11.1973, had ruled that the villages, in which non-tribals (petitioners) owned lands, were not those notified in the Presidential Order; hence, the application of the 1959 Regulations were not implemented in these 23 villages; with a view to give benefit to the tribals of these 23 villages, which was denied due to oversight on the part of the Government, the National Scheduled Areas and Scheduled Tribes Commission had proposed to the Government of India to amend the 1959 Regulations, but the proposal was turned down by the Government of India, Ministry of Home Affairs; the Government of India had directed the State Government, vide their D.O. letter dated 22.03.1979, to take up inclusion of these villages in the general revision; in the meantime, the State Government had submitted proposals to the Government of India for inclusion in the Scheduled Areas list but these 23 villages were not included in the list; and, therefore, these cases had to be examined separately. The District Collector, Warangal was requested to send proposals of these villages, of erstwhile Mulug taluq, observing the norms like contiguity to the existing Scheduled Area in accordance with the percentage of S.T. Population of 1971, 1981 and 1991 Census, and if they merit inclusion in the Scheduled Areas. The District Collector, Warangal was also requested to send the data in the prescribed proforma, communicated by the Government of India with map, while indicating the villages with the location code. Though the matter suffered several adjournments, to enable the D.O. Letter dated 22.03.1979, (referred to in the proceedings of the Director, Tribal Welfare dated 05.12.2003), to be placed for the perusal of this Court, the State Government has expressed its inability to trace the said letter.

96. The subsequent correspondence, (after the judgment of this Court in W.P. No. 1413 of 1923 dated 30.11.1973 confirmed in W.A. No. 486 of 1974 dated 08.07.1974), and the Bhuria Commission Report, proceed on the premise that these 23 villages were not included in the list of "Scheduled Areas" by over-sight. The proposal made by the State Government, long after the judgment of this Court in Koya Brahmanandam31, also appears to have been turned down by the Government of India and the State Government was directed, vide letter dated 22.03.1979, to take up inclusion of these villages in the general revision, on the very same premise. The basis, for the proceedings issued and the correspondence entered into between officials of the Central and State governments and the Bhuria Commission report, for their assumption that these 23 villages were not part of the "Scheduled Areas" is only the judgment of this Court in Koya Brahmanandam[1]. As detailed hereinabove, the said judgment was pronounced in ignorance of the relevant legal provisions and factual aspects. The mere fact that the judgment in Koya Brahmanandam[1] was passed several years ago, would not justify this Court refraining from taking a different view.

97. I see no reason, therefore, to interfere or to grant the relief sought for by the petitioners herein. The Writ Petitions fail and are, accordingly, dismissed. The miscellaneous petitions, if any pending, are also dismissed. However, in the

circumstances, without costs.

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[1] Judgment in W.P. No. 1413 of 1973 dated 30.11.1973

[2] Order in W.A. No. 486 of 1974 dated 08.07.1974