Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2976-2983 OF 2019

SATYAN ….Appellant

Versus

DEPUTY COMMISSIONER & ORS. ….Respondents

J U D G M E N T

SANJAY KISHAN KAUL, J.

1. The State Government of Karnataka granted lands to members of the Scheduled Caste and Scheduled Tribe community, free of charge, to assist in their economic empowerment and to provide them with opportunity for self-employment through agriculture, the lands granted being agricultural lands. In the early 1980s, the private

respondents No.3 were made beneficiaries of such grants on 12.8.1982, of lands measuring approx. two (2) acres for each of these beneficiaries, numbering eight (8), in Bannikuppe Village, Bidadi Hobli, Ramanagaram, Bangalore Rural District. These grants came with certain restrictions, especially *qua* transfer, so that the very objective with which the lands have been allotted is not defeated. We are concerned, in the present appeals, with the transfer of these lands to the appellant by all the eight (8) beneficiaries, in August and September, 1997, which were sought to be annulled by the orders of the competent authority, under The Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (hereinafter referred to as the 'said Act').

2. The grants made are on similar terms, and for the present controversy, clause 8 of the grant is material, which puts a condition of non-alienation for a period of fifteen (15) years. This clause appears to be in pursuance of Rule 9(i) of the Karnataka Land Grant Rules, 1969 (hereinafter referred to as the 'said Rules'), formulated in pursuance of the powers conferred under Section 197 of the Karnataka

Land Revenue Act, 1964. The said Rule 9, to the extent applicable on the relevant date, reads as under:

> "**9. Conditions of Grant**:- (1) The grant of lands under these rules (for agricultural purposes) shall be subject to the following conditions namely:-
>
> (i) the grantee shall not alienate the land for a period of fifteen years from the date of taking possession:
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> Provided that he may, after a period of five years, with the previous permission of, and subject to the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (Karnataka Act 2 of 1979), and such conditions as may be specified by the Deputy Commissioner, alienate the whole or any portion of such land. But however, the Deputy Commissioner shall not grant such permission unless he is satisfied that the alienation is for the purpose of acquiring other land or for improving the remaining land and the grantee credits to Government an amount equal to fifty percent of the market value of such land as on the date of sanction of such alienation as determined by the Deputy Commissioner:
>
> Provided that no person who has obtained permission to alienate land under the rule shall, notwithstanding the provisions of Rule 4 be eligible for grant of any Government Land."

We may notice that the period of fifteen (15) years in clause (i) stands substituted by the Notification dated 23.4.2005, with effect from 25.4.2005, with twenty-five (25) years, amongst certain other amendments.

3. The appellant purchased the lands from the private respondents *vide* sale deeds of different dates, but beyond the period of fifteen (15) years. The sale deeds have been executed by the private respondents, in favour of the appellant through their attorney, who is the wife of the appellant herein. The date of the General Power of Attorney (for short 'GPA') is stated to be 16.12.1996 (disclosed in pursuance of the order dated 5.4.2019) and the consideration is same for each of the sale deeds, i.e., Rs.4.50 lakhs and all such payments have been made in cash. It may be noted herein itself that the date of the GPA is before the expiry of fifteen (15) years. It is the case of the appellant that these sale deeds were executed after having obtained the permission of the competent authority under Section 4 of the said Act. The said provision reads as under:

> "**4. Prohibition of transfer of granted lands. –** (1) Notwithstanding anything in any law, agreement, contract or instrument, any transfer of granted land made either before or after the commencement of this Act, in contravention of the terms of the grant of such land or the law providing for such grant, or sub-section (2) shall be null and void and no right, title or interest in such land shall be conveyed or be deemed ever to have conveyed by such transfer.

> (2) No person shall, after the commencement of this Act, transfer or acquire by transfer any granted land without the previous permission of the Government.
>
> (3) The provisions of sub-section (1) and (2) shall apply also to the sale of any land in execution of a decree or order of a Civil Court or any award or order of any other authority."

4. An application was filed on 10.10.2005 by the villagers alleging that the sale deeds were illegal and have been executed without prior permission of the competent authority. This triggered off an inquiry into the transactions in question.

5. On inquiry, the Assistant Commissioner passed an order dated 5.5.2006, setting aside the sale deeds and directing restoration of the lands to the original allottees under Section 5 of the said Act. The appeal preferred against this order before the Deputy Commissioner was dismissed *vide* order dated 14.11.2006. The appellant assailed these orders in a writ petition filed before the Karnataka High Court, but that endeavour also failed when the learned single Judge dismissed the petition on 15.12.2008. The writ appeal filed against the same has been dismissed *vide* impugned order dated 16.10.2009. In the Special Leave Petitions (for short 'SLPs') filed against the

impugned order, an interim order to maintain status quo, as on date, was passed on 23.3.2012 and, subsequently, leave was granted on 11.3.2019.

6. We may notice that all the forums have found that the documents purporting to indicate prior permission for execution of the sale deeds had been found to be forged and fabricated, and separate criminal proceedings are stated to be pending against the same.

7. Mr. Dushyant Dave, learned senior counsel for the appellant, in the course of his arguments, actually sought to adopt a completely different plea, which had not been raised in the forums below. The plea is predicated on an interpretation sought to be given to Section 4 of the said Act. It was, thus, contended that Rule 9 of the said Rules (albeit enacted under a different statute) makes a reference to the said Act, insofar as the conditions of grant are concerned. In this behalf, our attention was invited to Rule 9, extracted aforesaid, where the said Rule prescribes for a non-alienation restriction for a period of five (5) years from the date of taking possession. This is, however, subject to

a proviso stipulating that after the initial period of five (5) years, previous permission may be obtained subject to such conditions, as may be specified by the Deputy Commissioner, and the permission is subject to the satisfaction that the alienation is for the purpose of acquiring other land or for improving the remaining land and that the grantee credits to the Government an amount equal to 50 per cent of the market value of such land as on the date of sanction of such alienation, as determined by the Deputy Commissioner. The contention, thus, formulated is that the restriction is only for a period of fifteen (15) years, and even within that window, beyond the period of five (5) years, on meeting certain conditions, alienation is possible. Thus, it was sought to be contended that there is no question of grant of any permission post the period of fifteen (15) years, as neither the grant nor the aforesaid Rule 9 deals with such an eventuality. One subsequent development, post the enactment of the said Rules, but prior to the transaction in question, is the insertion of the proviso *vide* GSR 169 dated 26.8.1993, with effect from 6.9.1993 (extracted aforesaid), which clearly stipulates that the permission to be granted

within the window of five (5) to fifteen (15) years would also be subject to the provisions of the said Act.

8. In a nutshell, the contention of the learned senior counsel was that the issue, whether the permission was or was not granted becomes irrelevant as no such permission was required to be obtained after fifteen (15) years from the date of grant of land.

9. Learned counsel sought to draw strength from the observations of this Court in ***Manchegowda & Ors. v. State of Karnataka & Ors.,***[1] more specifically para 24. The said case dealt with a constitutional challenge laid to Sections 4 and 5 of the said Act. The challenge was repelled. As to the nature of controversy examined by the Court, it would be apposite to reproduce para 7 of the said judgment, which reads as under:

> "7. The validity of the Act has been challenged mainly because of the provisions contained in Sections 4 and 5 of the Act which purport to declare transfers of "granted land" made either before or after the commencement of the Act in contravention of the terms of the grant of such land or the law providing for such grant null and void and confer powers on the authority to take possession of such land after evicting all persons in possession thereof and to restore

1 (1984) 3 SCC 301

such lands to the original grantee or his legal heirs and where it is not reasonably practicable to so restore the land to a person belonging to the Scheduled Castes or Scheduled Tribes in accordance with the rules relating to the grant of such land. It may be noted that the validity of the Act insofar as it imposes prohibition on transfer of granted land after the commencement of the Act has not been challenged and the principal objection to the validity of the Act is taken because of the provisions in the Act seeking to nullify the transfers of granted lands effected before the commencement of the Act."

10. The aforesaid would, thus, show that the real controversy arose on account of the provisions of the said Act being made applicable even to grants made prior to the commencement of the Act. It is in this context that the Court observed in para 24 as under:

> "24. Though we have come to the conclusion that the Act is valid, yet, in our opinion, we have to make certain aspects clear. Granted lands which had been transferred after the expiry of the period of prohibition do not come within the purview of the Act, and cannot be proceeded against under the provisions of this Act. The provisions of the Act make this position clear, as Sections 4 and 5 become applicable only when granted lands are transferred in breach of the condition relating to prohibition on transfer of such granted lands. Granted lands transferred before the commencement of the Act and not in contravention of prohibition on transfer are clearly beyond the scope and purview of the present Act. Also in case where granted lands had been transferred before the commencement of the Act in violation of the condition regarding prohibition on such transfer and the transferee who had initially acquired only a voidable

> title in such granted lands had perfected his title in the granted lands by prescription by long and continuous enjoyment thereof in accordance with law before the commencement of the Act, such granted lands would also not come within the purview of the present Act, as the title of such transferees to the granted lands has been perfected before the commencement of the Act. Since at the date of the commencement of the Act the title of such transferees had ceased to be voidable by reason of acquisition of prescriptive rights on account of long and continued user for the requisite period, the title of such transferees could not be rendered void by virtue of the provisions of the Act without violating the constitutional guarantee. We must, therefore, read down the provisions of the Act by holding that the Act will apply to transfers of granted lands made in breach of the condition imposing prohibition on transfer of granted lands only in those cases where the title acquired by the transferee was still voidable at the date of the commencement of the Act and had not lost its defeasible character at the date when the Act came into force. Transferees of granted lands having a perfected and not a voidable title at the commencement of the Act must be held to be outside the pale of the provisions of the Act. Section 4 of the Act must be so construed as not to have the effect of rendering void the title of any transferee which was not voidable at the date of the commencement of the Act."

11. The contention, however, of Mr. Dave was that the aforesaid para indicates that granted lands, which had been transferred after the expiry of the period of prohibition, do not come within the purview of the said Act. These granted lands, transferred before the commencement of the said Act, and not in contravention of the conditions regarding transfer are clearly beyond the scope and

purview of the said Act. Similarly, transfers made prior to the commencement of the said Act in violation of the conditions regarding prohibition of transfer, where titles were perfected before the commencement of the Act, by prescription, by long and continuous enjoyment, in accordance with law, have been excluded from the purview of the said Act.

12. The second limb of the submission of Mr. Dave, learned senior counsel for the appellant, was that settled transactions cannot be disturbed after a long period of time. The transactions were of the year 1997. They were sought to be unsettled after almost eight (8) years, by preferring an application in the year 2005. To support this plea, he referred to the following judicial pronouncements:

a. ***Ibrahimpatnam Taluk Vyavasaya Coolie Sangham v. K. Suresh Reddy & Ors.***[2] – the question posed to be decided in the appeal is referred to in para 1 and the question has been answered in para 19. Both paras 1 and 19 are read as under:

> "1. In all these appeals, the following question of law arises for consideration:

2 (2003) 7 SCC 667

> "Whether the Collector can exercise *suo motu* power under sub-section (4) of Section 50-B of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 *at any time* or such power is to be exercised within a reasonable time."
>
> …. …. …. …. ….
>
> "19. It is also necessary to note that the *suo motu* power was sought to be exercised by the Joint Collector after 13-15 years. Section 50-B was amended in the year 1979 by adding sub-section (4), but no action was taken to invalidate the certificates in exercise of the *suo motu* power till 1989. There is no convincing explanation as to why the authorities waited for such a long time. It appears that sub-section (4) was added so as to take action where alienations or transfers were made to defeat the provisions of the Land Ceiling Act. The Land Ceiling Act having come into force on 1-1-1975, the authorities should have made inquiries and efforts so as to exercise the *suo motu* power within reasonable time. The action of the Joint Collector in exercising *suo motu* power after several years and not within reasonable per;iod and passing orders cancelling validation certificates given by the Tahsildar, as rightly held by the High Court, could not be sustained."

The ratio, thus, is that such *suo moto* powers have to be exercised within a reasonable period of time.

b. ***Situ Sahu & Ors. v. State of Jharkhand & Ors.***[3] – the exercise of power in respect of transactions, which required prior

3 (2004) 8 SCC 340

sanction of the Deputy Commissioner was again observed to be one which had to be exercised within a reasonable period of time.

c. ***Chhedi Lal Yadav & Ors. v. Hari Kishore Yadav (Dead) through Legal Representatives & Ors.***[4]– the view expressed is the same as in the aforesaid two judgments in para 13, as under:

> "13. In our view, where no period of limitation is prescribed, the action must be taken, whether *suo motu* or on the application of the parties, within a reasonable time. Undoubtedly, what is reasonable time would depend on the circumstances of each case and the purpose of the statute. In the case before us, we are clear that the action is grossly delayed and taken beyond reasonable time, particularly, in view of the fact that the land was transferred several times during this period, obviously, in the faith that it is not encumbered by any rights."

d. ***Vivek M. Hinduja v. M. Aswatha & Ors***.[5]– the provisions of the said Act were in issue, where *suo moto* action was sought to be taken in 1998, in respect of transactions of the vintage 1967, and this was held to be a long delay, which did not warrant the exercise of such power.

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4 (2018) 12 SCC 527
5 Civil Appeal No. 2166/2009, decided on 6.12.2017

13. On the other hand, Mr. Huzefa Ahmadi, learned senior counsel appearing for the respondents sought to defend the impugned orders. He disputed the interpretation sought to be given to Section 4 of the said Act, read with Rule 9 of the said Rules, by emphasizing that under Section 4(2) of the said Act, there is an absolute embargo to transfer any land without previous permission of the Government. The bar being statutory in character, it was his submission, that this bar under the said Act prohibits such transfer, even though the grant may have put the restriction only for a period of fifteen (15) years. Thus, in case of both, the five (5) to fifteen (15) years' window, as well as post the fifteen (15) year period, this bar would apply, as the bar is not qualified by any period of the grant, under the said Act.

14. Mr. Ahmadi also contended that Rule 9 of the said Rules could not in any manner dilute the effect of the provisions of the said Act, especially as the said Act had come into force subsequently. The amendment to the proviso of Rule 9 would not imply that permission has to be obtained only for the window period of five (5) to fifteen (15) years, while no such permission was required for a period beyond fifteen (15) years.

15. In putting forth this proposition, apart from the plain reading of the provision, he sought to support his contention also on the larger objective of the said Act, as is available from the Statement of Objects and Reasons, which reads as under:

> "STATEMENT OF OBJECTS AND REASONS
> KARNATAKA ACT No.2 of 1979
> Karnataka Gazette, Extraordinary, dated 30.6.1978
>
> The non-alienation clause contained in the existing Land Grant Rules and the provision for cancellation of grants where the land is alienated in contravention of the above said provision are found not sufficient to help the Scheduled Castes and Scheduled Tribes grantees whose ignorance and poverty have been exploited by persons belonging to the affluent and powerful sections to obtain sales or mortgages either for a nominal consideration or for no consideration at all and they have become the victims of circumstances. To fulfil the purposes of the grant, the land even if it has been alienated, should be restored to the original grantee or his heirs.
>
> The Government of India has also been urging the State Government for enacting a legislation to prevent alienation of lands granted to Scheduled Castes and Scheduled Tribes by Government on the lines of the model legislation prepared by it and circulated to the State Government.
>
> Hence the Bill."

16. The objective being to prevent exploitation of the Scheduled Castes and Scheduled Tribes persons by more affluent persons, through the process of acquisition of the land, there was no reason whatsoever to read down the provisions of Section 4(2) of the said Act, based on the earlier Rule 9 of the said Rules, enacted under a different enactment.

17. Insofar as the observations in ***Manchegowda & Ors. v. State of Karnataka & Ors***[6] are concerned, emphasis was laid on the fact that while learned senior counsel for the appellant sought to read para 24 in isolation, the same had to be read in the context of what was sought to be decided, which would be apparent from paras 7 and 14. We have already extracted paras 7 and 24 aforesaid. The plea which was sought to be urged is set out in para 14, which reads as under:

> "14. What has been strongly urged before us is that the provisions contained in Section 4 insofar as the same seek to nullify transfers effected before the Act had come into force, are invalid."

18. It is his submission that, thus, the reading of the three paragraphs together supports the case advanced by the State

6 (supra)

Government rather than what was sought to be made out by learned senior counsel for the appellant.

19. Insofar as the requirement of prior permission from the competent authority is concerned, learned counsel submitted that it was never the case of the appellant, prior to the hearing before us, that such prior permission was not required. In this behalf, he invited our attention to the pleadings in this behalf, including in the synopsis.

20. Learned counsel also referred to certain judicial pronouncements to advance the proposition that such prior permission would be required in the cases of the like kind at hand, including under the provisions of the said Act. We proceed to discuss the same as under:

a. ***Dharma Naika v. Rama Naika & Anr.***[7] – the judgment deals with the provisions of the said Act. It was observed in paras 17 to 21 and 24 as under:

> "17. Keeping these provisions and the objects and reasons of the Act in mind, let us now deal with the submissions advanced by the learned counsel appearing on behalf of the

7 (2008) 14 SCC 517

appellant. According to the learned counsel for the appellant, having regard to the fact that the transfer of the granted land was made after the expiry of the prohibited period and before the coming into force of the Act, such transfer could not be hit by the provisions contained in Section 4(2) of the Act. In this connection, the learned counsel for the appellant had drawn our attention to Section 3(1)(e) of the Act, which defines “transfer”. We have already dealt with the definition of “transfer” hereinearlier. According to the learned counsel for the appellant, the prohibition imposed under Section 4 of the Act would not be applicable to the facts of the present case. As noted hereinearlier, the learned counsel, therefore, submitted that in view of the above, the High Court as well as the authorities below had committed an error in holding that the sale deed, having been executed and registered after the commencement of the Act, must be found to be null and void and that by the said sale deed, the right, title or interest in the granted land must be restored by the Assistant Commissioner, in the exercise of his power under Section 5 of the Act, to the respondents.

18. This submission of the learned counsel for the appellant was contested by the learned counsel appearing for the respondents. According to the learned counsel for the respondents, the transfer of the granted land must be hit by Section 4 of the Act as, admittedly, the sale deed was executed and registered after the commencement of the Act. The learned counsel for the respondents also contended that in view of the prohibition contained in Section 4 of the Act, even if the transfer was made before the commencement of the Act in view of the agreement for sale, still since the sale deed was executed and registered after the commencement of the Act, the same must be hit by Section 4 of the Act and, therefore, no right, title or interest in such granted land shall be conveyed or be deemed ever to have conveyed by such transfer and that being the position, no interference could be made with the impugned judgment as well as with the orders of the authorities.

19. Having heard the learned counsel for the parties and after examining the objects and reasons and the relevant provisions of the Act, as noted hereinearlier, in depth and in detail, we have no hesitation to hold that the submissions of the learned counsel for the appellant cannot at all be accepted. It is true that the agreement for sale in respect of the granted land was executed before the commencement of the Act. It is also an admitted position that "transfer" under the Act includes an agreement to sell as well. Keeping this fact in mind, let us now see whether in view of Section 4 of the Act, the transfer of the land, in respect of which the agreement for sale was executed before the commencement of the Act but which was effected after the commencement of the Act by execution and registration of the sale deed, could be said to be null and void. Section 4(1) of the Act in clear terms provides that notwithstanding anything contained in any law, agreement, contract or instrument, any transfer of granted land made either before or after the commencement of the Act in contravention of either (a) the terms of grant of such land; or (b) the provisions of the law providing for such grant; or (c) sub-section (2) of Section 4 of the Act, shall be null and void and no right, title or interest in such land shall be conveyed or be deemed ever to have conveyed by such transfer. Therefore, under Section 4(1) of the Act, it can be safely concluded that this provision declares any transfer of granted land made either before or after the coming into force of the Act, to be null and void if it is in contravention of the conditions specified therein.

20. Section 4(2) of the Act, as noted hereinearlier, deals with the transfer of granted land after the commencement of the Act i.e. after 1-1-1979. For the purpose of Section 4(2), the court must be satisfied that (1) the sale deed was executed and registered after the commencement of the Act, and (2) the same was executed and registered without seeking prior permission of the State Government. Therefore, Section 4(2) clearly postulates that a transferee cannot acquire the granted land from the grantee without seeking the

permission of the Government nor can the grantee transfer it without seeking prior permission from the Government.

21. We have already considered the scheme of the Act as also the objects and reasons for which it was introduced. It is an admitted position that the Act was introduced to help and protect the right, title and interest of the Scheduled Castes and Scheduled Tribes, in respect of the granted lands, whose poverty and status in the society was taken advantage of by some rich and affluent persons who took their lands either by paying a paltry sum or even without paying anything to them."

…. …. …. …. ….

"24. Let us, therefore, consider whether any of the conditions is satisfied in the present case and thereby, whether, the transfer shall be null and void conveying or deeming ever to have conveyed no right, title or interest of such land by such transfer. So far as the first condition, namely, transfer in contravention of the terms of the grant of such land is concerned, it cannot be disputed in the facts of this case that there was no contravention of the terms of the grant of such land as the transfer was admittedly made after 15 years of the date of certificate, which was the only condition regarding prohibition of transfer in the grant. It is also not in dispute that there is no contravention of any law providing for such grant. Therefore, so far as these two conditions are concerned, it cannot be disputed that they are not satisfied. Now, let us take into consideration the third condition i.e. transfer made in contravention of sub-section (2) of Section 4 of the Act. In respect of this condition, a transfer of any granted land made after the commencement of the Act in contravention of sub-section (2) shall be null and void and no right, title or interest in such land shall be conveyed or be deemed ever to have conveyed by such transfer. Sub-section (2) of Section 4 clearly says that:

> "4. (2) No person shall, after the commencement of this Act, transfer or acquire by transfer any granted land without the previous permission of the Government."

Therefore, sub-section (2) of Section 4 prohibits transfer or acquisition by transfer, either by the transferor or by the transferee of any granted land without the previous permission of the Government. Therefore, after the commencement of this Act, if any transfer is effected or any person acquires any granted land by transfer, without the previous permission of the Government, such transfer shall be null and void and no right, title or interest in such land shall be conveyed or be deemed ever to have conveyed by such transfer."

As to how the judgment in ***Manchegowda & Ors. v. State of Karnataka & Ors.***[8] has to be considered, it was further observed, in para 27 as under:

> "27. Before parting with this judgment, we may note that the learned counsel for the appellant in support of his contention, as noted hereinabove, relied on a decision of this Court in Manchegowda v. State of Karnataka [(1984) 3 SCC 301]. This decision was also relied on by the learned counsel who appeared for the appellant before the learned Single Judge of the Karnataka High Court. In our view, the decision of this Court in Manchegowda [(1984) 3 SCC 301] was rightly distinguished by the learned Single Judge. We are in agreement with the decision of this Court in Manchegowda [(1984) 3 SCC 301] but the scope of challenge by the petitioners in that decision was limited which was stated at para 7 of the said judgment, as follows: (SCC p. 306, para 7)

8 (supra)

> "7. … It may be noted that the validity of the Act insofar as it imposes prohibition on transfer of granted land after the commencement of the Act has not been challenged and the principal objection to the validity of the Act is taken because of the provisions in the Act seeking to nullify the transfers of granted lands effected before the commencement of the Act."
>
> Therefore, we are in full agreement with the views expressed by the learned Single Judge of the High Court that the scope of challenge by the petitioners in the aforesaid decision of this Court was limited and, therefore, that decision cannot be of any help to the appellant in the present case."

b. ***Harishchandra Hegde v. State of Karnataka & Ors.***[9] – Once again, the case pertains to the same said Act and discusses the effect of ***Manchegowda & Ors. v. State of Karnataka & Ors.***[10] In that context, it has been observed that Section 4, by virtue of containing a *non obstante* clause, would apply notwithstanding anything contained in any agreement or any other Act for the time being in force.

c. ***Amrendra Pratap Singh v. Tej Bahadur Prajapati & Ors.***[11] – The provisions of the Orissa Scheduled Areas Transfer of

9 (2004) 9 SCC 780
10 (supra)
11 (2004) 10 SCC 65

Immovable Property (by Scheduled Tribes) Regulations, 1956 were examined, and in that context, observations were made in para 25 that the State is the custodian and trustee of the immovable property of tribals, and is enjoined to see that the tribals remains in possession of such property. In the Regulations in that case, no period of limitation was prescribed, and the period of twelve (12) years in Article 65 of the Limitation Act became irrelevant so far as the immovable property of a tribal was concerned. Such tribal need not file a civil suit which will be governed by the law of limitation since it is enough if he or anyone on his behalf moves the State or the State itself moves into action to protect him and restore property to him.

21. Insofar as the factual aspects of the execution of the document, stated to be the sale deeds, is concerned, it was highlighted that the land owners were represented by a GPA, who was the wife of the vendee (appellant), and the entire amount was paid in cash. This GPA was executed even prior to the fifteen (15) years period, and thus

obviously, the nature of transaction was such that it had occurred prior to the fifteen (15) year period, though the formal sale deed was executed after the fifteen (15) years period. In either eventuality, it was submitted that prior permission would be required.

22. Another aspect which was sought to be highlighted by Mr. Ahmadi, learned senior counsel was that it was not even open to the appellant to have raised any contention before this Court, much less a new contention, in view of the conduct of the appellant, who grossly misrepresented facts before this Court. The gravamen of the case of the appellant throughout is that they have obtained prior permission and that such prior permission was required. It was found that the documents purporting to be prior permission were forged and fabricated, for which criminal proceedings are separately pending. However, while making the relevant averments in the appeal, it has been categorically stated that the permission to transfer land had been granted. The documents which were found to be forged, were in fact, suppressed. Such suppression, it was submitted, would disentitle the appellant to any relief whatsoever.

23. In support of his submission, learned senior counsel sought to refer to certain judicial pronouncements on the effect of suppression as under:

a. ***K.D. Sharma v. Steel Authority of India Limited & Ors.***[12] – In para 37 of this judgment, a reference was made to the proposition as propounded by the King's Bench in the following terms:

> "37. In Kensington Income Tax Commrs. [(1917) 1 KB 486: 86 LJKB 257: 116 LT 136 (CA)] Viscount Reading, C.J. observed: (KB pp. 495-96)
>
> "… Where an *ex parte* application has been made to this Court for a rule *nisi* or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. *But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a*

12 (2008) 12 SCC 481

proceeding which has only been set in motion by means of a misleading affidavit."

(*emphasis supplied*)"

The aforesaid principle was observed to have been followed while dealing with prerogative writs, whether under Article 32 or Article 226 of the Constitution of India, and a litigant cannot be permitted to play "hide and seek" or to "pick and choose" the facts he likes to disclose, and to suppress or not to disclose other facts. Thus, a party with "soiled hands" is not liable to be entertained.

b. ***A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam represented by its President & Ors.***[13]

c. Hari Narain v. Badri Das[14] - the leave granted was revoked on the basis that where such leave has been obtained by suppression of facts, the mere fact that leave was granted, would not come in the way of the Court disentitling the appellant to relief.

13 (2012) 6 SCC 430
14 (1964) 2 SCR 203

24. We have examined the aforesaid elaborate contentions advanced by both the learned senior counsel for the parties. In our view, the matter is in a very narrow compass.

25. Turning to the last aspect first, i.e., suppression of material fact, we must observe that the manner of dealing with facts by the appellant does leave much to be desired. There ought to have been full disclosure of documents. However, we cannot be oblivious of the fact that all the orders below are predicated on a reasoning that while the appellant sought to make out a case that permission had been granted, no such permission had actually been granted by the competent authority, and the documents furnished in this behalf were found to be forged and fabricated. The criminal proceedings, however, are still pending *qua* that aspect, and we would not like to delve in the matter any further, on this aspect, which is really in the nature of a preliminary objection by the respondent-State. It is not necessary to non-suit the appellant on this ground itself, as we feel that the merits of the matter itself ought to be dealt with.

26. There is substance in the contention of the respondent-State that the appellant had throughout sought to make out a case based on prior permission by the competent authority. It was nobody's case that permission was not required to be obtained. At this stage of the civil appeal, without any pleadings being there, it is not even really open to the appellant to have pleaded the interpretation they so sought to plead. This really cannot be categorized as a legal plea alone, and that too raised at the fifth level of scrutiny in the hierarchy of proceedings. The appellant, really faced with a factual situation where the permissions do not exist, now sought to build another bridge to contend that be that as it may, no permission is required. Such a plea cannot be countenanced.

27. If we analyze the aforesaid plea also, we find no merit in the same. We cannot lose sight of the objective with which the said Act was enacted. The non-alienation clause existing in the said Rules, and incorporated in the grants, was found to be inadequate to protect the interests of Scheduled Castes and Scheduled Tribes, who were given land owing to their ignorance and poverty. Influential and powerful

sections of society were stated to be obtaining sales and mortgages for consideration, and Scheduled Castes and Scheduled Tribes became victims of circumstances. The objective of the State Government in enacting the said Act was to prevent such misuse and, therefore, in categorical terms, transfer with permission was prescribed. This would be *de hors* the terms of the grant or the said Rules. Thus, whether it was a case where it was within the window of five (5) to fifteen (15) years, or the period beyond fifteen (15) years, such permission would be required.

28. No doubt Rule 9 of the said Rules, enacted under a different enactment, prior to the enactment of the said Act (and thereafter even amended), does contemplate transfer between the window of five (5) to fifteen (15) years on certain terms and conditions, which are required to be satisfied by the Deputy Commissioner. There is, in fact, a prohibition in grant of such permission until and unless there is satisfaction of the Deputy Commissioner that the alienation is for the purpose of acquiring other land, or for improving the remaining land and that the grantee credits to Government an amount equal to fifty

percent of the market value of such land as on the date of sanction of such alienation. Thus, more rigorous terms have been put for transfer within the window of five (5) to fifteen (15) years.

29. The reason for the competent authority to arrive at a decision whether to grant permission or not after the period of fifteen (15) years may or may not be coloured by such considerations. But certainly, he may satisfy himself that the members of the Scheduled Castes and Scheduled Tribes only, who have been allotted the land, are not taken for a ride, and it is possibly in their best interest for recorded reasons that such permission should be granted. The wordings of Section 4(2) of the said Act are quite clear in its terms.

30. Section 4 of the said Act, dealing with prohibition of transfer of granted land, in sub-section (1), begins with a *non obstante* clause. It is notwithstanding anything in any agreement, contract or instrument, or for that matter in any law. Section 11 of the said Act further enforces this by giving the said Act an overriding effect over any other law. The said Section 11 reads as under:

> "**11. Act to override other laws.-** The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom, usage or contract or any decree or order of a Court, Tribunal or other Authority."

31. The aforesaid Section is applicable for grants made either before or after the commencement of the Act. The terms of the grant cannot be contravened, but the last part of sub-section (1) of Section 4 of the said Act makes any transfer in violation of sub-section (2) also null and void. Sub-section (2) of Section 4 of the said Act is crisp and clear in its terms, putting an absolute ban on transfer after the commencement of the Act, without previous permission of the Government. Thus, a bare reading of the provision makes it abundantly clear that it brooks no two interpretations. After the period of fifteen (15) years also, thus, permission was required to be taken.

32. The legal position enunciated in various judicial pronouncements is also very clear in this behalf. The observations in ***Manchegowda & Ors. v. State of Karnataka & Ors.,***[15] in para 24, cannot be taken out of context, as what would have to be scrutinized is

15 (supra)

the proposition sought to be determined in that case. The validity of the Act had been challenged mainly because the provisions contained in Sections 4 and 5 of the Act purported to declare transfer of "granted land" made before or after the commencement of the Act, in contravention of the terms of the grant of such land or law, null and void. In para 14, what was urged before the Court has been set out, i.e., the challenge being to Section 4 insofar as it seeks to nullify the transfer effected before the Act came into force. In the conspectus of the aforesaid observations, para 24 has to be read.

33. The aforesaid aspect is really not in doubt, in view of the subsequent judicial pronouncements, more specifically in ***Dharma Naika v. Rama Naika & Anr.***[16] The context of the observations made in ***Manchegowda v. State of Karnataka***[17] has been clearly enunciated. It is noted that the agreements for sale were executed before the commencement of the Act. The sale deed was executed afterwards. In that context it was observed that it could be safely concluded that provisions of Section 4(1) declared any transfer of land made either

16 (supra)
17 (supra)

before or after the commencement of the said Act to be null and void if it contravened the conditions specified therein. Section 4(2) was held to make it abundantly clear that if the sale deed was executed and registered after the commencement of the said Act, and was without prior permission of the State Government, such transfer would be invalid and null and void. The scheme of the said Act was also discussed in detail with the objective with which it was enacted. Before parting with the judgment, this Court observed in para 27 that ***Manchegowda & Ors. v. State of Karnataka & Ors.***[18] has to be read in the context of the limited scope, as enunciated in para 7 of that judgment. Nothing more is really left to be said after this judgment, though there are certain other judicial pronouncements referred to aforesaid, cited by learned counsel for the State. Suffice to say that a delay of eight (8) years by itself cannot come in the way of the competent authority taking the action, as limitation principles would not apply, as observed in ***Amrendra Pratap Singh v. Tej Bahadur Prajapati & Ors.***[19] The cases referred to by learned senior counsel for

18 (supra)
19 (supra)

the appellant involved huge gaps of around twenty (20) to thirty (30) years, which is not so in the present case.

34. The period of eight (8) years cannot be said to be such, as to amount to such delay and laches as would make the action void, considering that it is in respect of a beneficial legislation for the Scheduled Castes and Scheduled Tribes community.

35. We may also add that the documents of transfer executed themselves, also do not evoke much confidence. As observed aforesaid, complete consideration is paid in cash. Further, the documents of transfer were executed by the allottee, but through the attorney, who is none other than the wife of the appellant. The GPA was executed prior to the period of fifteen (15) years, and it is inconceivable that the same would have been executed without consideration. It does seem to suggest that for all practical terms, the alleged transfer took place prior to the lapse of the fifteen (15) year period, but the sale deed was executed after such fifteen (15) year period. Be that as it may, in any case, it would not make any difference to the result of the case.

36. We are of the view that the courts below committed no error, and the competent authority has acted within its jurisdiction to nullify the transactions which are contrary to the statutory provisions of Section 4(2) of the said Act, and the manner of execution itself raises many doubts.

37. The appeals are accordingly dismissed, leaving the parties to bear their own costs.

.....J.
[Sanjay Kishan Kaul]

.....J.
[Indira Banerjee]

New Delhi.
April 30, 2019.