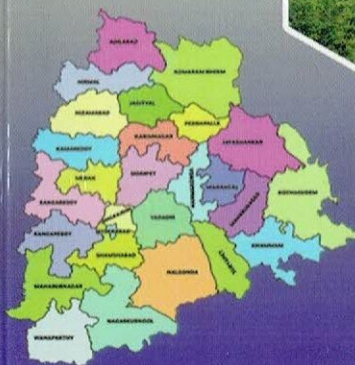
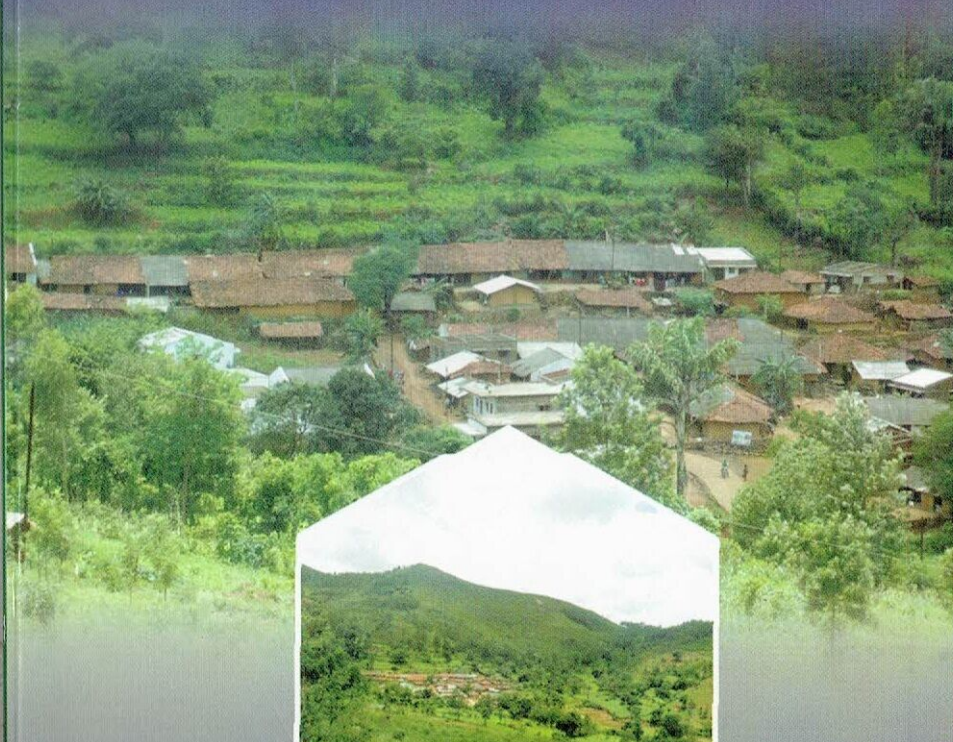


*Key Judgements on Tribal Land Alienation :*

# **LAND RIGHTS OF ADIVASIS**

## **(TELANGANA AND ANDHRA PRADESH)**



**PALLA TRINADHA RAO**

**Key judgements on Tribal Land  
Alienation**

**Land Rights of Adivasis  
(Telangana and Andhra Pradesh)**

**Palla Trinadha Rao**

*Key Judgements on Tribal Land Alienation:*  
Land Rights of Adivasis In Telangana and Andhra Pradesh

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**Glossary of Local and Legal Terms**

## Preface

Land is the most important natural asset from which the tribals derive their security and social status. The nature of tribal relationship with land is distinct from the economic relationship that the non-tribal society has with land. In the context of tribal life, the relationship is not merely economic in nature but occupies a spiritual and emotional space in tribal life.

The alienation and restoration of adivasi land and land rights has been one of the most complex and sensitive issues in Andhra Pradesh despite the tribal protective Land Transfer Regulations that have been in force. The phenomenon of land dispossession is complex and varied. Over the years, the adivasis have witnessed continued dispossession of both individual and community control over their resources. The continued alienation has not only aggravated their poverty but has also seriously threatened their identity in their own homeland.

The Land Transfer Regulations 1 of 70 prohibits transfer of lands not only between the tribals and non tribals but also among the non tribals in the Scheduled Areas of both Telangana and Andhra Pradesh. This book is a compilation of more than 80 judgements dealing with the Land Transfer Regulations and is meant to provide easy reference for those interested in basic information about the judicial interpretation of the law on this subject. The list of judgements summarized here is not exhaustive but most of the judgments given in a capsule form. The full text of the judgements can be read in the law journals cited after the title of the case.

This book is also an attempt to provide a compilation of executive directions given by the Governments to the officials from time to time for effective implementation of Land Transfer Laws in the Scheduled Areas. Apart from the legal information a few articles of the author, published on this subject in Economic and Political Weekly and Law Journal of All India Legal Decisions, are included for better understanding of the tribal land concerns and role of Legal Institutions.

The objective of this compilation on tribal land laws is to empower tribal rights activists, law students, adivasi lawyers, para legals, civil society organizations and implementing officials in the field of Scheduled Areas. I do hope that this publication will be found useful by those interested on policy and law concerning tribal land issues.

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My special thanks to Dr. M.Padma, IAS, Director of Tribal Welfare, Government of Andhra Pradesh for extending her support to the publication.

**Dr. Palla Trinadha Rao**

## Acronyms and Abbreviations

AA	Andhra Area
ADR	Alternative Dispute Resolutions
AIR	All Indian Reporter
ALD	Andhra Legal Decisions
ALT	Andhra Law Times
AnWR	Andhra Weekly Reporter
AP	Andhra Pradesh
APLJ	Andhra Pradesh Law Journal
CA	Civil Appeal
CPC	Civil Procedure Code
DB	Divisional Bench
DLC	District Level Committee
E.G.Dist.	East Godavari District
FB	Full Bench
FCA	Forest Conservation Act
FRA	Forest Rights Act
GoAP	Government of Andhra Pradesh
HC	High Court
HPCL	Hindustan Petroleum Corporation Limited.
ITDA	Integrated Tribal Development Agency
J	Justice
JFMC	Joint Forest Management Committee
LTR	Land Transfer Regulation
MFP	Minor Forest Produce

MRO	Mandal Revenue Officer
NOC	Notes On Cases
NRC	Notes on Recent Cases
OTFD	Other Traditional Forest Dwellers
PESA	Panchayats Extension to Scheduled Areas
PVTG	Particularly Vulnerable Tribal Group
RDO	Revenue Divisional Officer
RoFR	Recognition of Forest Rights
SA	Scheduled Area
SC	Supreme Court
SCC	Supreme Court Cases
SDC	Special Deputy Collector
SDLC	Sub Divisional Level Committee
Sec	Section
SLP	Special Leave Petition
ST	Scheduled Tribe
TA	Telangana Area
TAC	Tribal Advisory Council
TPAct	Transfer Property Act
W.G.Dist	West Godavari District
WP	Writ Petition
WPMP	Writ Petition, Miscellaneous Petition

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## I. Land Governance in the Scheduled Areas

### Historical Legal Perspective

Land alienation as a pressing problem was first recognized during the British rule in India when the Schedule Districts Act XIV, 1874 was passed, aiming to protect tribals from the danger of further land alienation and indebtedness. Exercising the power under Section 6 of the Scheduled Districts Act, 1874, the local government issued rules for the administration of the Agency Tracts and for regulation of the procedure of the Officers so appointed to administer them.

Subsequently, the Agency Tracts Interest and Land Transfer Act 1917, (Act of 1917), came to be passed with the object of limiting the rate of interest and to check the transfer of land in the Agency Tracts in Ganjam, Vizagapatnam and Godavari Districts. By a subsequent notification, the Act was extended to the taluk of Bhadrachalam in the East Godavari District.

A large number of areas predominantly inhabited by Adivasis had been declared to be Excluded/Partially Excluded Areas during the British period. After the Constitution of India came into effect, the Fifth and Sixth Schedules were incorporated into the Constitution by the founding fathers. The Fifth Schedule designates power to the President of India to declare certain specified areas as Scheduled Areas. The Scheduled Areas (Part 'A' States) Order, 1950 and the Scheduled Areas (Part 'B' States) Order, 1950 were issued declaring certain specified areas as Scheduled Areas in Part 'A' and Part 'B' States respectively. Part 'A' States refers to the Scheduled Areas of Andhra region while Part 'B' States refers to Telangana region of Andhra Pradesh State. Now Part B States has become a separate State by virtue of AP Reorganization Act 2014. The provisions of the Fifth Schedule of the Constitution were made applicable to the Scheduled areas of Andhra Pradesh.

Article 244 contained in Part X of the Constitution entitled The Scheduled and Tribal Areas, states as under:

**“Article 244. (1)** The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Area and



Scheduled Tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram.”

Therefore, Article 244 provides that the administration and control of the Scheduled Areas shall be in accordance with the Fifth Schedule. The Fifth Schedule has often been described as “a Constitution within the Constitution” for the special governance of Scheduled Areas where the populations of Scheduled Tribes are concentrated. The purpose of Scheduled Areas, as also recognized in several judgments of this Hon’ble Court, such as *Samatha Vs. State of Andhra Pradesh* (1997) 8 SCC 191, is to preserve the tribal autonomy, their culture and economic empowerment, to ensure social, economic and political justice and for preservation of peace and good governance in the Scheduled Areas.

It is pertinent to note that the Fifth Schedule recognizes the Governor as playing a central role in the governance and administration of the Scheduled Areas, with the President of India holding the final responsibility of ensuring the integrity of the Scheduled Areas. In particular, Paragraph 5 provides as under:

#### **Laws Applicable to Scheduled Areas**

(1) Notwithstanding anything in this Constitution, the Governor 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 or shall 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 this sub-paragraph may be given so as to have retrospective effect.

(2) The Governor may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area. In particular and without prejudice to the generality of the foregoing power, such regulations may—

- (a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;
- (b) regulate the allotment of land to members of the Scheduled Tribes in such area;
- (c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.

(3) In making any such regulation as is referred to in sub-paragraph (2) of this paragraph, the Governor 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.

(4) All regulations made under this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.

(5) No regulation shall be made under this paragraph unless the Governor making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council.”

Therefore, the Constitution places a great responsibility upon the Governor, under the guidance of the President of India to ensure the good governance of Scheduled Areas through the enactment/modification of legislation or Regulations, including but not limited to, regulation of land transfers and control of money-lending. It further provides under sub-paragraph (5) that all such regulations be made in consultation with the Tribes Advisory Council and thereafter submitted to the President for his assent.

#### **Tribal Protective Land Laws**

Exercising the power conferred by para (5) of Fifth Schedule, the Governor issued the A.P Scheduled Area Land Transfer Regulation, 1959 (Regulation 1 of 1959) which came into force on 4-3-1959 partially repealing the earlier Agency Tracts Land Transfer Act 1917. This Regulation is to prohibit transfer of lands between tribals and non tribals in the Scheduled Areas without previous sanction of State Government. The word ‘transfer’ means sale, lease, mortgage with or without possession, gift, exchange or any dealing with the immovable property in the Scheduled Areas. This was made to regulate the transfer of lands in the scheduled areas of East Godavari, West Godavari, Visakhapatnam and Srikakulam.

However, in Telangana region Tribal Areas Regulation 1356 Fasli (1946 A.D) was made after the tribal rebellion led by Komaram Bhim in Adilabad District. 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

relation 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 Area Rules 1359 Fasli on 16.11.1949. The most important provision of this Regulation is *'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 site 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 an areas as a Notified Tribal Area'*.

The Tribal Area Regulation 1359 Fasali (1949 AD) in the Telangana districts was repealed in 1963 and replaced by A.P. Scheduled Area Land Transfer Regulations 1 of 59 which came in to force on 1.12.63. With the result, Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 was made applicable to the areas in the Districts of Adilabad, Warangal, Khammam and Mahbubnagar also.

Although the protective Land Transfer Regulations had been in force, it was observed by several committees that the non-tribals were able to find ways and means to circumvent the provisions of Land Transfer Regulation 1 of 1959 by entering into benami transactions and other clandestine transactions with unsophisticated tribals. As there was no check on transfer of lands between non tribal settlers and other non tribals, several transactions in relation to the immovable property situated in the scheduled areas were effected. There were big tribal revolts led by Naxalites in the district of Srikakulam.

It is only with a view to maintain peace and to govern the area effectively Regulation 1 of 1970 was passed by the Governor amending 1959 Regulation. According to this, non-tribal who validly acquired the title was not to be disturbed, but he is not allowed to sell his land to a non-tribal which will inevitably mean new entrants into the Scheduled Area. The basic purpose was to ensure that the land of the tribals should not be frittered away to outsiders by transfer. In the case of a void transaction, the power to restore land to the tribal or his heirs (after evicting the non-tribal) was vested with the Government. Until the contrary is proved, any immovable property situated in the Agency tracts and in the possession of a "person" who is not a member of Scheduled Tribe, shall be presumed

to have been acquired by such person or his predecessor in possession through a transfer made to him by a member of a Scheduled Tribe.

All the Estates, Muttas, Mukhas, Mahals in the Scheduled Areas were abolished and brought under the Ryotwari Settlement Regulations. These Regulations say that no patta shall be granted in respect of land exceeding ten percent gradient. The Regulations state that the Settlement Officer has to conduct an enquiry into the nature of all land in respect to which a patta is claimed, to decide in respect of which land the claim shall be allowed and the person entitled to ryotwari settlement patta. These Regulations on one hand end the feudal system of administration of land but on the other hand opened the floodgates of Scheduled Areas for non-tribals to claim legal rights over tribal land.

All the Settlement Regulations referred above in fact dilute the letter and spirit of Land Transfer Regulations 1 of 70 by enabling non-tribals to claim patta over land situated in the Scheduled Areas. It may be mentioned here that under the Land Transfer Regulations 1 of 70, it was legally presumed that unless and until contrary proved, the land in occupation of non-tribals would be deemed to have come from the tribals through a transfer.

The Expert Group on Prevention of Alienation of Tribal Land and its Restoration, of the Ministry of Rural Development, Government of India headed by the Planning Commission Member, B. N. Yugandar has also cast a serious doubt on the settlement patta throughout Schedule Five areas. Similarly, the denial of pattas to the tribals is the other side of the coin of Settlement Pattas, which calls for a scrutiny of the rejection orders. (Girglani Commission Report .J.M (2005) Committee Report of Ministry of Rural Development (Govt of AP).

Another piece of legislation which speaks about the protection to tribal lands and prevention of land alienation is the Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA). The State PESA was extended to the Scheduled Areas of the Andhra Pradesh through the A.P.Panchayat Raj (Amendment) Act (AP PESA) in 1998. Rules under AP PESA were brought in the year 2011. The PESA Rules enable the Gram Sabha to conduct enquiries in to tribal and non tribal land disputes in the Scheduled Areas.

## II. 'Land' mark Judgements on Land Transfer Regulations

### I. Constitutional validity of LTR: Supreme Court

The Supreme Court declared in this case that the provisions of the A.P. Scheduled Area Land Transfer Regulations 1 of 70 are constitutionally valid. The Supreme Court gave a socially vibrant interpretation to the Regulation.

Land Reforms – A.P. Scheduled Area Land Transfer Regulation, 1959 – Whether S.3 (1) of the Regulations prohibiting not only tribals but also 'non-tribals' from transferring their land and properties in the Scheduled areas to 'non-tribals' are ultravires Art. 19(1) (f) of the Constitution – Answered in the negative.

Constitution of India – Andhra Pradesh Scheduled Area Lands transfer (Amendment) Regulation, 1970, S.3(1) – Constitutional Validity of – Whether S.3(1) of the Regulation prohibiting not only tribals but also 'non-tribals' from transferring their lands and properties in the scheduled areas to "non-tribals" are ultra vires Art 19(1)(f) of the Constitution– Held, no.

Words & Phrases – 'Land' – It is a comprehensive expression wide enough to include structures, if any; raised thereon.

Held: -The 'non-tribals' had so often circumvented the legislation enacted in order to protect the 'tribals' by recourse to benami transaction, and by recourse to dubious devices. The poor ignorant illiterate, and unsophisticated tribals had succumbed to the wiles of the economically stronger and unscrupulous 'non-tribals'. A legislation which in essence and substance aims at restoration to the 'tribals' of the lands which originally belonged to the 'tribals' but which passed into the hands of 'non-tribals' in the aforesaid background certainly cannot be characterized as unreasonable. The scanning must be done through the objective lens of the Court representing the collective conscience of the community and not through the tinged lens of appellants whose economic interests may be prejudicially affected by the impugned provisions. The community cannot shut its eyes to the fact that the competition between the 'tribals'

and the 'non-tribals' partakes the character of the race between a handicapped one-legged person and an able bodied two legged person. True, transfer by 'non-tribals' to 'non-tribals' would not diminish the pool. It would maintain status quo. But is it sufficient or fair enough to freeze the exploitative deprivation of the 'tribals' and thereby legalize and perpetuate the past-wrong instead of effacing the same? As a mater of fact it would be unjust, unfair and highly unreasonable merely to freeze the situation instead of reversing the injustice and restoring the status-quo-ante. The provisions merely command that if a land holder voluntarily and on his own volition is desirous of alienating the land, he may do so only in favour of 'tribal'. It would be adding insult to injury to impose such a disability only on the tribals (the victims of oppression and exploitation themselves) and discriminate against them in this regard whilst leaving the 'non-tribals' to thrive on the fruits of their exploitation at the cost of 'tribals'.

*(P.Rami Reddy & others Vs. State of A.P. & Another. (1988) 22 Reports (SC) 364)*

### 2. What includes the word "Transfer"?

The word 'Transfer' under Land Transfer Regulation means mortgage with or without possession lease, sale, gift, exchange or any other dealing with immovable property, not being a testamentary disposition and includes a charge on such property or a contract relating to such property in respect of such mortgage, lease, sale, gift, exchange or other dealing.

i) A.P. Scheduled Area Land Transfer Regulations-Sec.2(g) and 3(1)(b) – Expression "**dealing with immoveable property**" in Sec.2(g) includes acts of forcible dispossession and encroachment – A dispossessed tribal is entitled to restoration of possession of his land.

Held: The expression dealing with immoveable property occurring in Sec. 2 (g) of the Regulation embraces, within its fold, acts of forcible dispossession and encroachment.

*(M.Suresh Bhargava & another Vs. State of A.P & Others.1989 (2) ALT 516)*

ii) A.P. Scheduled Areas Land Transfer Regulation, 1959 – Section 2(g) – "**Other dealing**"- Allotment of shops in Bus stands in Agency Areas

by means of tenders in the form of licence – Falls with in the expression “other dealing” and hence prohibited – The word ‘licence’ can be read under the general expression ‘other dealings’ used in Section 2(g) of the Regulation.

*(Adarsha Adivasi Mahila Samithi & others Vs. Agent to the Govt. Khammam & others. 2003 (5) ALD 284)*

iii) A.P. Scheduled Area Land Transfer Regulations-Sec-3: “Exchange” of land in scheduled area-Any transfer of immovable property situate in agency tract to a person other than a Scheduled Tribe or to a society not composed members of Scheduled Tribes- Null and void.-Ist defendant claiming that his father who is a second defendant in the case acquired title to suit land by **exchange**. Father of defendant not being a person belonging to Scheduled Tribe, transaction of exchange even if true, is hit by Section 3 of Regulations 1 of 59.

*(Ashok Vs. Baba rao and another. 2002(6) ALT 296.)*

iv) A.P. Scheduled Area Land Transfer Regulations-Sec.2(g)-”Transfer”- meaning of –Transfer includes “**contract to sell**”.

*(Kakarla Nageswara rao and other Vs. Govt. of A.P. rep by its secretary(Tribal Welfare)Dept. Hyderabad.1995(3)ALT 164.)*

v) A.P. Scheduled Area Land Transfer Regulation-Section 3 and 2(g)-Abnus (Beedi) leaves of standing trees-Whether immovable property-Section 3 relating to transfer of immovable property be construed liberally-Sale of beedi leaves by Government- Pruning of the trees which is for the benefit of the members of the Scheduled Tribes by itself not amounting to transfer of immovable property-Abnus leaves when they fall down from trees cease to be immovable property though they are part of immovable property when they are on tree-Tenderer has nothing to do with plucking of leaves from tree-Restrictions in the Regulation do not there fore apply.

*(Andhra Pradesh Tribal Welfare Union Vs. State of A.P.2001 ALT (Rev) 259 (DB)*

vi) Transfer of Property Act(4 of 1882), S.122 – **Gift** – Transfer of immovable property by way of Pasupu Kunkuma – ‘Pasupu Kunkuma’

means a gift, settlement or assignment of land to daughter-said transaction amount to a gift and requires registration.

*(Gandevalla Jayaram Reddy Vs. Mokkal Padmavathamma and others. AIR 2002 A.P.75 (Full bench) AIR 1980 A.P. 139, Overruled.)*

vii) Constitution of India, Art.244, Sch.5, para 5(2) – Orissa Scheduled Areas Transfer of immovable Property (By Scheduled Tribes) Regulation (2 of 1956), S.3 – ‘Transfer of immovable property’ by ST – Expression ‘transfer’ – includes any ‘dealing’ with such property – Word ‘deal with’ not defined in Statute – Dictionary meaning if taken as safe guide can be extended to achieve legislative object of Act – Transaction or dealing with immovable property having effect of extinguishing title of member of aboriginal tribe – and vesting same in non-tribal – Is construed as ‘transfer of immovable property’. Interpretation of Statute – Dictionary meaning – Extended to achieve object of Act.

*(Amrendra Prapat Singh, Appellant Vs. Tej Bahadur Prajapati and others, AIR 2004 Supreme Court 3782.)*

viii) Sections 2(g) and 3(1)(a) – “Transfer” – Within meaning of Section 2(g), includes lease, sale, gift, exchange, mortgage, charge on property or “any other dealing with immovable property” and not merely conveyance of property by a living person to another living person as under Section 5 of T.P.Act – Term “Transfer” thus, given a wide meaning unlike in term “Transfer of property” as defined in Section 5 of T.P.Act – Even if land classified as Gayalu/Government poramboke, person who is in possession of such land must be said to be dealing with such immovable property – Therefore same falls within scope of “Transfer” as defined under Section 2(g) of the Regulation – [Transfer of Property Act 1882, Section 5]

Section 3(2) and 2(1)(a) – Occupation of land in contravention of Section 3(1)(a)-Ejectment – Order of, by Deputy Collector recording a finding of fact that the land is ‘Gayalu’ and same confirmed in appeal by Agent to Government – Revision against, dismissed by Government – Writ petition – Plea that Ex.R-7, copy of Extract of Settlement register/fair adangal, was not taken into consideration – Plea, held wholly misconceived – Original authority as well as appellate authority considered

said aspect and recorded a finding that land is Gayalu, which is unassailable – Finding cannot be interfered with – Power of High Court under Article 226 of the Constitution while exercising certiorari jurisdiction, very limited – Writ petition dismissed – Constitution of India Article 226 (HC).

*(Vuppuluri Veera Venkata Raju and others Vs. Special Deputy Tahsildar, Tribal Welfare, Gangavaram (V&M), E.G District and others. 2007 (6) ALD 292)*

ix) Permanent lease amounts to Transfer-Sec 2(g) LTR – Ryotwari patta can not be granted-Regulation 7(1) proviso – Ryothwari patta – Entitlement for, conditions, scope – Persons claiming Ryotwari patta must prove/satisfy two conciliations (i) their continuous lawful possession not less than 8 years immediately before commencement of Regulation II/1970 and (ii) possession must be lawful under A.P. Schedule Areas Land Regulation or any other law for time being in force – Admittedly, father of petitioners acquired land from Freeholder with absolute heritable and transferable rights under unregistered documents dt. 9.11.1968 – Petitioners, therefore, cannot claim that they have satisfied first condition – Further, said permanent lease amounts to ‘transfer’ under 2(g) of A.P. Schedule Areas Land Transfer Regulation and such transfer of immovable property is prohibited – Order rejecting claim of petitioners for Ryotwari patta in respect of said lands, held, suffers from no illegality warranting correction by High Court under writ jurisdiction – Writ petition dismissed – (A.P. Scheduled Areas Land Transfer Regulation 1959, Regulation 2(g).

*(Thota Saidaiah and another V Commissioner of Appeals, Hyderabad and others (A.Gopal Reddy,J.) 2011 (3) ALD 501 = 2011(3) ALT 240)*

x) Tribal land rights stressed- Un registered sale papers can not be considered-Transfer of land in scheduled areas – Bar on, scope – A.P. Scheduled Areas Land Transfer Regulation 1959, Section 3. A.P. Scheduled Areas Land Transfer Regulation 1959 – Section 3 – Transfer of land in scheduled areas, bar on, scope – Rights of tribals – Cannot be defeated by recourse to hyper-technicalities – Land belonging to a tribal declared protected tenant under Section 38-E of A.P. (T.A)

Tenancy and Agriculture Lands Act – Transfer, of in favour of a non-tribal by way of unregistered sale deed – Validity – **Held**, unregistered sale deed cannot be taken into account, while examining nature of rights under Regulation – Apart from prohibition contained in Section 3 of Regulation, alleged sale deed was invalid on account of embargo contained in Section 38-E of Act – (A.P. (T.A) Tenancy and Agricultural Lands Act 1950, Section 38-E; Registration Act 1908, Section 17(1)).

#### **Facts:**

R5's grandfather, KV, a tribal was declared protected tenant in respect of Ac 12.12gts, in Scheduled area and was granted certificate under Section 38-E of A.P. (T.A) Tenancy and Agricultural Lands Act 1950 – 1<sup>st</sup> petitioner's grandfather, Vs. claimed that he purchased said land from KV under unregistered sale deed dated 6.1.1961 / R3 (Special Deputy Collector (TW) dismissed LTR Case filed on basis of K. V's complaint – Later R5 approached R3/Spl. Dy. Collector with similar complaint – This case also was dismissed based on order in earlier LTR case – Still later case filed by Akhila Bharateeya Adivasi Parishad before R3 alleging that land owned by R5's grandfather was being illegally enjoyed by petitioners herein – Case dismissed – Appeal to Agent to Government (District Collector) by R5, allowed – Revision by petitioners before Government/R1 rejected – Writ Petitioner.

#### **Held**

The grandfather of the 5<sup>th</sup> respondent acquired title over the land as a protected tenant. The same has ripened to that of ownership with the issuance of a certificate under Section 38-E of the act. The Regulation prohibits transfer of land from tribals in favour of non-tribals. It was extended to the Telangana area with effect from 1.12.1963. The grandfather of the first petitioner pleaded that he purchased Acs. 12.12 guntas of land from Veeraswamy through an unregistered sale deed on 6.1.1961. In view of Section 17(1) of the Registration Act and the other provisions of the Transfer of Property Act, the sale through such a documents cannot be recognized in law. This Court, in its judgment, dated 10.8.1998 in CRP No.1087 of 1996 held that an unregistered sale deed cannot be taken into account, while examining the nature of rights under the Regulations. Similar view was taken in order judgments also. (Para 7)

Even as of now, the Pattadar continues to be Veeraswamy. It was only in the possession column in the pahanies that the name of Mr. Subaiah was inserted for the years 1963-64 onwards till 1970-71 along with that of Veeraswamy. In case, the possession is exclusive, the question of the name of Veeraswamy figuring in the column No. 16, which depicts the name of the person in actual possession of the land, would not arise. Therefore, even if one goes by the evidence adduced on behalf of the petitioners, it becomes clear that they failed to prove exclusive possession before 1972. It was only for the year 1971-72 that the name of Vemula Venkata Subbaiah was shown as exclusive possessor of Acs. 12.12 guntas of land even while continuing Veeraswamy as Pattadar. Therefore, the claim of the petitioners as to exclusive possession cannot be taken into account. (Para ..?)

The Regulations were enacted through a special mechanism in exercise of powers under Schedule-V of the constitution of India; Framers of the Constitution have evolved a special procedure for protection of the rights of the tribals in the scheduled areas. Such rights cannot be permitted to be defeated by having recourse to the hyper technicalities. It is apt to refer here that apart from the prohibition contained under Section 3 of the Regulations, the alleged transfer in favour of Subbaiah was invalid on account of the prohibition contained under Section 38-E of the Act. It is rather unfortunate that it took three rounds of litigation spread over three generations for the 5<sup>th</sup> respondent to realize the land. Correspondingly, the family was denied the benefit of the enjoyments of the land for such a long time. The matter cannot brook any further delay. (Para 12)

**Finding** - Writ petition dismissed.

A.P. Scheduled Areas Land Transfer Regulation 1959 – Section 3 – Proceedings under – Res judicata, principles of, applicability – Order passed in earlier proceedings will not operate as res judicate if subsequent proceedings initiated by different person, or by same persons on strength of some other material – (Civil Procedure Code 1908, Section)

*(Vemula Bhaskar Rao and another Vs. Government of Andhra Pradesh and others W.P.No. 23669/000, dated 11-12-2008, (2009 (2) ALD 500)*

**xi) Allotting retail outlet in Scheduled Area to Non tribals- Unlawful-AP.Scheduled Area Land Transfer Regulations 1 of 70**

The contention of the petitioner is that Rampachodavaram is notified as scheduled area under the provisions of the AP Scheduled Area Land Transfer Regulation, 1959 allotting HPCL retail outlet No.182 at Rampachodavaram, to non-tribal candidate is illegal.

**Order:** Though counter affidavit is not filed, Sri M.Ravindranath Reddy, learned Standing Counsel appearing on behalf of the corrigendum published in the Hindu English Daily News Paper dated 23-12-2003 and submits that the allotment of HPCL retail outlet No.182 to SC (Woman) is cancelled. The learned Counsel also produced a copy of the para wise remarks and submits that as the subject location was erroneously advertised to SC(W) category, corrigendum is published. He further submits that in view of the interim orders passed by this Court, correct category for allotment of said HPCL outlet is not notified.

In view of the publication of the corrigendum, there is no need for further adjudication of the issue involved in this Writ Petition. In that view of the matter, I dispose of the Writ Petition directing the respondents to take steps to notify the allotment of subject outlet to correct category, as expeditiously possible.

*(Kathula Remi Reddy Vs. Hindustan Petroleum Corporation Ltd., (HPCL) and others.- WP No 44 of 2004 dated 29<sup>th</sup> April,2004, AP High Court)*

**xii) Transfer through “Will” is permissible under LTR**

Sections 2(g) and 3 – Devolution of land through testamentary succession – Cannot be treated as transfer under S.2(g) – Accrual of title to petitioners on basis of Will executed by their mother – Clearly a testamentary disposition that gave rise to rights of ownership to petitioners – Such a disposition being outside scope of S.2(g) and thereby, S.3 of Regulation – Initiation of proceedings against petitioners on ground that transfer of land in their favour has taken contrary to provisions of law, therefore, untenable – Writ petition allowed – Spl. Dy. Collector restrained from initiating any steps against petitioners under Regulation in relation to subject land.

Whatever may have been the legality of the title held by the mother of the petitioners, any transfer made by her in favour of non-tribals, even if such non-tribals are her own family members, would have been contrary to Section 3 of the Regulation. It needs to be noted that the definition of transfer adopted under the regulation is far wider, when compared to the definition of transfers under the Transfer of Property Act. While under that Act, it is only transactions of sale, mortgage, lease, gift, and exchange, effected through the registered documents that are to be treated as transfers, Section 2(g) of the Regulation defines the word 'transfer' to include not only the transactions of the nature, but also any contracts or agreements preceding them. From a perusal of definition, it becomes clear that notwithstanding the enlargement of the scope of transfer of immovable properties, the definition has clearly excluded from its purview, the testamentary dispositions. Once the Legislature felt it appropriate to keep the testamentary dispositions outside the purview of the definition of transfer under the regulation, it is not at all open to any authority to invoke its jurisdiction, vis-à-vis any accrual of property in a scheduled area to a citizen under a Will.

In the instant case, it is not in dispute that the basis for accrual of title to the petitioners is the Will executed by their mother. It is clearly a testamentary disposition that gave rise to the rights of ownership to the petitioners. Such a disposition is outside the scope of Section 2(g) and thereby, Section 3 of the Regulation.

*(Alapati Kanak Durga and another Vs. Special Deputy Collector, Tribal Welfare, KR puram, West Godavari District and others, (L. Narasimha Reddy, J.), 2013 (3) ALD 542 = 2013(6) ALT 488)*

**xiii) "Will" in favor of a stranger- Not permissible**

AP Assigned Lands (Prohibition of Transfers) Act, 1977 (Act No.9 of 1977), Section 2(6) – Word 'transfer' – Definition of – Exclusion of testamentary disposition from the definition of 'transfer' – Interpretation of – Will though a testamentary disposition, in the case of assigned land in favour or strangers of family – Not permissible – Bequeathing of assigned land in favour of strangers under a Will – Prohibited under the Act – They are not entitled to be in possession of assigned land – Will executed by assignee in favour of his family members does not come

with the definition of 'transfer' under the Act – Government while assigning resumed land shall consider claims of all eligible landless poor persons including that of petitioner. (Para 5)

Interpretation of Statutes – Beneficial statutes be interpreted adopting interpretation which furthers the object of the Act even bypassing common and general notions. (Para 5)

Adoption – Proof of – Ordering of LT petition to facilitate a person to defend an appeal brought against deceased cannot be construed as declaring his rights as the adopted son of the deceased unless an enquiry is held under Order 22 Rule 5 CPC – Factum of adoption be proved followed by proper pleadings and evidence. (Paras 4 and 3)

*(Katta Yesuratnam Vs. Commissioner, Land Revenue, A.P Hyderabad and others (Mr. B.Subhashan Reddy, J.) 1997(6) ALT 829)*

**xiv) "Immovable Property" also includes house and buildings:**

AP (Scheduled Areas) Land Transfer Regulation, 1959-Section 3 – Expression 'Immovable property' in Section 3 is not confined only to land but house and building are also included – Lease of a building in a Scheduled Area to a non-tribal contrary to Section 3 void – Landlord cannot seek eviction.

**Held:** The language in Section 3 of the Regulation, where the expression used is immovable property, it cannot be construed as agricultural land. Further in Section 3(c) as well as the Preamble the word used land and not 'Agricultural land'. The expression (land) in its legal sense is a comprehensive expression which is wide enough to include structures, if any, raised thereon. The expression 'immovable property' includes house and building also and cannot be confined only to agricultural land or vacant land.

In the present case, the language of Section 3 is clear and unambiguous. It unequivocally says that any transfer of immovable property in the agency tract in favour of non-tribal is null and void. The Courts must take into account the legislative mandate by refusing to enforce any such agreement which is null and void per se. Having regard to the object and scheme of the Regulation which is to give effect to the principles contained in Part V of the Constitution of India and a social

enactment in favour of the Scheduled Tribes, the Courts must hold such transaction as void and should not give effect to such agreements. The plaintiff is now asking for eviction on the basis of a lease which is contrary to Section 3 of the Regulation. Since the transaction of lease is void no relief can be granted to the plaintiff.

*(Pingili Pratap Reddy Vs. Dandu Pullam Raju (Amareswari and Syed Shah Mohd. Quadri, JJ.) 1989(3) ALT 319)*

**(xv) Pruning of trees not amounting to word “transfer” of immovable Property:**

A.P.Scheduled Area Land Transfer Regulations.-Section 3 and 2(g) – Abnus (Beedi) leaves of standing trees – Whether immovable property – Section 3 relating to transfer of immovable property be construed liberally – Sale of Beedi leaves by Government – Pruning of the trees which is for the benefit of the members of the Scheduled Tribes by itself not amounting to transfer of immovable property – Abnus leaves when they fall down from tree cease to be immovable property though they are part of immovable property when they are on tree – Tenderer has nothing to do with plucking of leaves from tree – Restriction in the Regulation do not therefore apply.

*(Andhra Pradesh Tribal (Girijan) Welfare (Abhyudaya) Union (Sangam) rep. by its President and others Vs. State of AP Energy, Forests, Environment, Since and Technology Dept. and others; (Satyabrata Sinha, CJ and S.R. Nayak, J.); 2001(3) ALT 411=2001 ALT (Rev.) 259=2001(3) ALD 189 (DB)*

**3. Permission Required for land transfers by Tribals:**

**i. Section 3(2) and 6** (prior to coming into force of Regulation 1 of 1970) – Transfer of immovable property by a non-tribal to another non-tribal – Transfer taken place prior to coming into force to Regulation 1 of 1970 prohibiting such transfers – Validity – Held, 1959 Regulation did not prohibit in stricto sensu, transfer of immovable property by a non-tribal to another non-tribal – Regulation 1 of 1970 does not operate retrospectively and cannot affect proceedings made prior to coming into force of Regulation 1 of 1970 – However, when vendors, who executed the sale deed dated 1-5-1951 were members of a Scheduled Tribe, transfer

in favour of non-tribals without obtaining permission of Agent under Section 4 of Act 1 of 1917 is null and void .

Sections 6 and 3(2) (As amended by Regulation 1 of 1970) – Agricultural land in agency area – Possession of, by non-tribals – Initiation of action by Special Deputy Tahsildar under Section 3(2) – Issuance of eviction notice and orders of ejectment, confirmed by appellate and revisional authorities – Writ petition – Plea that grand father of petitioners purchased Items I and II from tribals, after obtaining necessary permission from Agent under Section 4 of Act 1 of 1917 – Failure of petitioners to produce proceedings issued by concerned Assistant Agent permitting to sell Items I and II – held, when petitioners did not produce permission granted under Section 4(1) of Act 1 of 1917 permitting to sell Items I and II, no importance and weight can be given to such mention in two sale deeds under which Items I and II were transferred – Failure of petitioners to discharge burden, which lies on them – It is for petitioners to prove transaction is valid and no presumption can be drawn – Sale of Items I and II by a tribal, in favour of a non-tribal, held, void under Section 4(1) of Act 1 of 1917 – (Agency Tracts Interest and Land Transfer Act 1917, Section 4) – Evidence Act 1872, Sections 90,102 and 103 (HC). *(Yandapu Satyavati and another Vs. Secretary to Govt. (Tribal Welfare) of A.P., Hyderabad and others. 2007 (5) ALD 769)*

**ii. Permission given by a designated Officer only valid:** Section 3(1)(a), 10 – Applicability of Regulation to transaction taken place prior to coming into force of Regulation – AP. Agency Tracts Interest and Land Transfer Act 1917, Sections 2(f), 4,6 and 7 – Property belonging to Tribal – Mortgaged with Co-operative Society for obtaining loan – Auction of, for realizing loan amount without written permission of Assistant Agent – Purchased by non-tribal – Sale deed registered pursuant to confirmation of sale by Deputy Registrar of Co-operative Societies and District Registrar, who cannot be treated as Agents and Assistant Agents for purpose of Act – Sale by Co-operative Society, held did not confer any alienable and marketable title on purchaser – Subsequent sales in favour of petitioner’s father cannot be recognized in law – Petitioner failed to discharge burden that sale did not violate Act – Hence subsequent sales are void – (Rules framed under Section 7 of 1917 Act vide Order No.187,



dated 22-1-1918, Rule 5; A.P. Scheduled Areas Land Transfer Regulation 1959, (As amended by Regulation 1 of 1970), Sections 3(1)(a),10)  
*(Kantheti Rama Krishna Vs. Agent to Government, East Godavari at Kakinada and others. 2007(6) ALD 69.)*

**(iii) Permission obtained for sale-Factual Enquiry in to the sale Transaction- Benami transaction proved-Validity of Finding-**

Section 3 – Immovable property situated in Agency Tracts – Transfer of-, by a member of tribal community in favour of a non-tribal under registered sale deed after grant of permission by State Government vide G.O.Ms.No.2285/15-11-1967 – Authority of Secretary to Government, Agent to Government and Spl. Dy. Collector (respts-1 to 3) to go into validity of transaction under registered sale deed ignoring said GO., scope – Subject land transferred by ‘P’, a member of Scheduled Tribe community to ‘S’, another member of same community, who is none other than a farm servant of petitioner, under registered sale deed dt.8-8-1963 – Subsequently a registered sale deed dt.6-12-1967 executed by ‘S’ after obtaining sanction for sale of land in favour of petitioner vide GO referred to supra – Admittedly there was not previous sanction of State Government or of Agent for transaction dt.8-8-1963 as mandated by S.3(1)(ii) of Regulation as it is stood prior to amendment in 1970 – So it is void transaction – It being a void transaction, title to property continued to be with ‘P’ and did not pass to ‘S’ – Therefore, notwithstanding permission accorded by State Government under GOMs.No.2285 for transfer from ‘S’ to petitioner, ‘S’ could not have conveyed any right, title or interest to petitioner in respect of subject land – Held, therefore, that G.O.Ms.No.2285 dt.15-11-1967 did not come in way of respts-1 to 3 in going into validity of transaction dt.8-8-1963. Section 3 and 4 (As amended by Regulation 1 of 1970) – Immovable property situated in Agency Tracts – Transfer of-, by ‘P’ a tribal in favour of another tribal ‘S’, who was none other than a farm servant of petitioner, a non-tribal, under registered sale deed dt.8-8-1963 – Transfer of said property by ‘S’ in favour of petitioner under a registered sale deed dt.6-11-1967 after obtaining permission from State Government vide G.O.Ms.No.2285/15-11-1967 – Orders passed by Agent to Government and Spl. Dy. Collector (respts-2 and 3) as confirmed by

State Government (respt-1) for eviction of petitioner, restoration possession of subject land to ‘P’ declaring transaction under sale deed dt.8-8-1963 as a benami transaction for benefit of petitioner – Validity – Held, conclusion that ‘S’ is only a benamindar for petitioner in sale transaction dt. 8-8-1963 arrived at by Agent to Government and Spl. Dy. Collector, based on appreciation of evidence on record – Hence, said findings cannot be said to be perverse or rendered by ignoring material evidence – Findings rightly accepted by State Government in impugned order – Not liable to be interfered with by Court under Art.226 of Constitution – Transaction of 1963 being void in law, subsequent Government Order of 1967 cannot sanctify it and validate it – Petitioner cannot be permitted to rely upon Regulation 1 of 1959 to retain possession since in violation of it, she had obtained land – No relief can be granted to petitioner – Eviction orders passed against petitioner by respts-1 to 3, upheld – Writ petition dismissed – [Constitution of India, Articles 46 and 226]

*(G.Varalakshmi Vs. Secretary to Government, Social Welfare (LTR) Dept., Hyderabad and others, (MS.Ramachandra Rao, J.), 2013(5) ALD 518)*

**(iv) Ban on Registration of land transfers- Role of Agent to Government and Sub Registrar emphasized:** Regulation 3-B – Agency area – Assigned lands – Prohibition of alienation and restriction on registration of document – Rule 18 added to Land Transfer Rules, obligates person presenting documents to furnish declaration in prescribed form which shall be subject to verification in prescribed manner by Agent to Government – While making verification as contemplated under Regulation 3-B and Rule 18 of Transfer Rules if it is noticed that land purchased by petitioners cannot be transferred in view of nature of land and prohibition contained under A.P Assigned Lands (Prohibition of Transfers) Act, it is duty of Agent to Government to bring it to notice of registering authority – Sub-Registrar cannot be held to have committed illegality in refusing to register sale documents presented for registration in light of Form \_L received from Agent – (A.P Assigned Lands (Prohibition of Transfers) Act 19977, Sections 3 and 5; A.P Scheduled Area Land Transfer Rules 1969, Rule 18.

*(Keram Mangaiah Vs. Agent to Government at Khammam and another 2006 (4) ALD 74 = 2006 (3) ALT 548)*

#### 4. Alienation of land by Govt. to non-tribals prohibited.

i) A.P. Scheduled Area Land Transfer Regulations -S-3 word 'person' in S.3(1) – would include both natural persons as well as juristic person, and Constitutional Government – This liberal and wider interpretation would maximize allotment of Government land in Schedule area to the tribals to make socio economic justice assured in the Preamble and Articles 38,39 and 46 a reality to the tribals. The restricted interpretation would defeat with objective of the Constitution. The word person would be so interpreted as to include State or juristic person corporate sole etc.- Transfer of land by juristic persons or allotment of land by State to non tribals – Stands prohibited achieving the object of para 5(2)of the Fifth Schedule of the Constitution and Sec.3 of A.P. Scheduled Area Land Transfer Regulations.

A.P. Scheduled Areas Land Transfer Regulation 1959 Sec – 3 Mines and Minerals (Regulation and Development) Act 1957 (Act 67 of 1957) Sec.11 (5) as amended. Under the Regulation, Govt. had to power to lease out lands in agency areas to non tribals also for mining operations till amendment, power of Govt. Sec.11 (5) of Act No 67 of 1957 – By amendment, Power of Govt. to grant leases to non tribals in agency areas is prohibited.

ii) Constitution of India, Arts.298,245, Sch.5, Part 8, Para 5 – Scope – Executive power of State is subject to legislative power under Cl.5(1) of Fifth Schedule – Sub-para 5(2) combines both legislative as well as executive power – Word “regulation” in para 5(2)(b) is thus of wide import – In view of para 5(2) there is implied prohibition on States power of allotment of land to non-tribals in Scheduled areas.

A.P Scheduled Areas Land Transfer Regulation (1of 1959), S.3.- Constitution of India, Art.21 – Right to life – Scope – Right to life means something more than mere survival of animal existence – Thus tribals have fundamental right to social and economic empowerment.

*(Samata Appellants Vs. State of Andhra Pradesh & others with Ms. Hyderabad abrasives & Minerals(P) Ltd.(appellant) & State of Andhra Pradesh & other, Respondents. A.I.R. 1997 Supreme Court 3297.)*

#### 5. Transfer of lands between non-tribals: Null & Void

i) A.P. Scheduled Area Land Transfer Regulations(As amended by Regulation 1 of 1970) Sections 3 (1)(a) and 3(2) – Sale transaction between two non-tribals in a Scheduled Areas is null and void.

**Held** - Prior to amendment in 1970, it is not in dispute that transactions between non-tribals are not held to be void. The amendment is designedly brought about in 1970 to rope in the transactions between non-tribals. In view of the specific terms of Section 3(1) (a) of the Regulation, the authorities below were justified in holding that the purchase by the petitioner of the land from respondent No.4 is hit by Section 3(1) (a) of the Regulation and must, therefore, be held to be invalid.

*(K.Suranna in Re. 1986(1) ALT 73 NRC.)*

ii) Section 3, sub-sections (1)(a) and (2)(a) – Transfer of Land in a scheduled area by a non-tribal to a non-tribal – Void – Non-tribal-transferor not entitled to restoration of the said land in his favour – Clause(a) of sub-section(2) of section 3 not applicable to non-tribal-transferor – Non-tribal-transferee not entitled to retain the land – History of legislation made applicable to scheduled areas – Stated.

**Held:** In the case of a transfer of land situate within the scheduled area by a non-tribal in favour of another non-tribal which is absolutely null and void under the provisions of sub-section(1) of Section 3, the non-tribal transferor is not entitled to have the land restored to him and clause (a) of sub-section(2) of Section 3 of Regulation 1 of 1959, as amended by Regulation 1 of 1970, has no application to such a transfer. Even the transferee non-tribal is also not entitled to retain the property.-The laws made applicable to the scheduled areas indicate an anxiety to safeguard the interest of the tribals in the scheduled areas and to see that the land in the scheduled areas should be in possession of tribals only-Even though under Regulation 1 of 1959 unamended, the transfer by a non-tribal to a non-tribal was valid, by way of amendment made by Regulation 1 of 1970, the said transfer was also made null and void.-Section 3(1)(a) as substituted now clearly makes any transfer made by any person absolutely null and void unless it is made in favour of a tribal. Transfer by a non-tribal in favour of a non-tribal is absolutely null and void.-A reading of clause (b) of sub-section (2) of Section 3 of Regulation 1 of 1959 as

amended indicates that the word "transfer" is qualified by the words "other member of a scheduled tribe". That means the transferor also must be a member of a scheduled tribe. Otherwise, the clause would have read as "to a scheduled tribe" instead of "to any other member of a scheduled tribe".-The intention of clause (a) of sub-section(2) of section 3 is that restoration can only be to a tribal transferor.-Having a regard to the object, the content of the legislation and in the context, the word "transferor" occurring in clause (a) of sub-section (2) of Section 3 should be construed as 'tribal transferor'.

Even without reference to any actual transfer, mere possession of the property situated in Agency tracts by a non-tribal raised the presumption under Clause(b) of sub-section(1) of Section 3 to the effect that such possession was obtained only on a transfer made by a schedule tribe which is hit by Section 3(1)(a) and the possession of the said land can be restored back to a tribal under Clause (a) of sub-section(2) of Section 3, of course, this is subject to any enquiry in which the non-tribal will be given an opportunity to prove otherwise. Therefore, the object seems to be that all the immovable properties in Agency Tracts, as far as possible, must be restored back to the tribals, which was held by tribals at one time. Therefore, it is not possible to hold that restoration under an invalid transfer made by a non-tribal can also be made in favour of him.

*(Vemana Somalamma & another (Appl), Veera Sunkar Deo & another (pet) Vs. Deputy Collector(TW), Rampachodavaram, E.G.Dist,1993(1) ALT 409 (F.B)*

#### **6. G.Os benefiting Non-tribals to continue in occupation of Govt.lands-Struck down**

i) A.P. Scheduled Area Land transfer Regulations-sec.3-The G.O MS 129 issued by the Government is illegal and without jurisdiction-In 1979 the Government of Andhra Pradesh (Social Welfare-department) issued G.O.Ms.No 129 dated 13.8.1979 directing the officers concerned not to evict non -tribal land less poor persons in occupation of Government lands in Scheduled areas up to an extent of Ac.5.00 of wet land or Ac.10.00 dry land. This G.O was questioned before High Court of A.P. The High Court quashed the G.O as illegal and without jurisdiction.

*(A.P.Girijan Welfare Students and Youth Union Vs. State of A.P. W.P.No 1755/90 dated 5.12.1984)*

ii) A.P. Scheduled Areas Land Transfer Regulations59(As Amended by 1 of 1970)-A.P. Scheduled area Ryotwari settlement Regulations 1970-Agency laws - Strict implementation - Directions issued - G.O.Ms No.41, Dt. 12-10-1971 and G.O.Ms No.951, Dt.4-12-1974 prohibiting eviction of non-tribal Sivai Zamadars in occupation of Government lands in Scheduled areas quashed and the said Sivai Zamadars directed to be evicted under Land Encroachment Act.-Initially the Government issued G.O.Ms No 971 Revenue dated 7-10-69 where under orders were issued prohibiting assignment of Government lands situated in Scheduled areas to non-tribals. The G.O was amended by G.O.Ms No 41 Revenue dated 12.1-1971 directing the authorities concerned not to evict the Sivai Zamadars in occupation of Government lands up to an extent of Ac.21/2 wet or Ac.5.00 dry land if they are in continuous possession of those lands for a period of not less than 10 years. Subsequently in 1974,the Government issued yet another order in G.O.Ms No 951 (Employment and Social Welfare Department) dated 4-12-74 directing the authorities concerned not to evict Sivai Zamdars belonging to Scheduled Castes in occupation of Government lands up to an extent of Ac.21/2 wet and Ac.5.00 dry land, if they are in occupation of those lands since 1969.- State can not issue orders in exercise of its executive power contrary to the Statute- Hence all the G.Os permitting the continuance of the non tribal Sivai Zamdars shall be ignored and all of them have to be necessarily disposed by following the due process of law and by pressing into service the provisions of A.P. Encroachment Act.

*(P.Gangamma Vs. Vasudha Misra & another. 1998(2) ALD 35.)*

iii) A.P. Scheduled Area Land Transfer Regulation-sec.2(g)-A.P.Land Encroachment Act, 1905, Section 7 and 6. - Eviction of encroacher - Assignment of house-site in scheduled area to a non-tribal (husband of petitioner) - Prohibited under the Regulation - Assignment of transfer within the meaning of Section 2(g) of the Regulation - Assignment of land and patta issued cancelled on that ground - Cancellation of patta became final - On such cancellation, assignee is an encroachers and liable to be evicted under the Land Encroachment Act even if he is a landless poor - Construction of house thereon by assignee does not give any right to continue in illegal possession - Provisions of the Encroachment

Act, extend to entire State of A.P. including scheduled areas unless operation of the Act is excluded in respect of scheduled areas by Governor by issue of notification under Schedule V of Constitution of India – No such notification issued – Land in scheduled area cannot be acquired under Land Acquisition Act for providing house-sites even to Scheduled Castes *de hors* the Regulation – Transfer of land in scheduled areas in favour of any persons other than non-tribals – Totally prohibited under the Regulation – Petitioner, wife of assignee has no right to continue in possession of house-site and house thereon contrary to Regulation – Eviction of petitioner under Land Encroachment Act – Sustainable – Petition dismissed.

*(Koppula Saramma Vs. Govt. of A.P. Social Welfare Dept. & others. 2001 (3) ALT 501.)*

iv) A.P. Scheduled Area Land Transfer Regulations(1 of 59),S.3-The Government being under a legal constraint to deal with the property situated in the Agency Tracts only in the manner indicated under the Regulations, cannot itself beyond the scope of the Regulations by saying that it is free to dispose of its own properties in any manner it likes. If the Government was allowed to transfer to dispose of its own land in favour of non-tribals, it would completely destroy the legal and constitutional fabric made to protect the Scheduled Tribes. The prohibition so to say disqualifies non-tribals as a class from acquiring or getting property on transfer. On account of this disqualification the Government cannot even if it is not a person within the meaning of para 3(1) (a) transfer let out or allot its land or other immovable property to a non tribal.

*(Samata Vs. State of Andhra Pradesh. AIR 1997 Supreme Court 3297)*

#### 7. Land Transfer Regulation prevails over other Statutory Laws

i) Andhra Pradesh Schedule Areas Land Transfer Regulation, 1959 (As amended by Regulation 1 of 1970) – Section 3(1)(a) – Prohibition of transfer of lands in scheduled area to any person other than one belonging to Scheduled Tribe or a Co-operative Society composed solely of Scheduled Tribes – Petitioner who is a non-tribal purchased the land in

scheduled area under a sale deed after coming into force of the amendment regulation – Transfer is void – Order of Special Deputy Collector declaring the said transfer as void and directing eviction of the petitioner is valid – It is no liable to be questioned on the ground that a patta has been granted to the petitioner by the Director of Settlements under the provisions of Regulation 2 of 1970.

Land Transfer Regulation as amended by Regulation 1 of 1970 prevails over the provisions of Regulation 2 of 1970 and no Ryotwari patta can be granted in violation of the provisions of regulation 1 of 1970 – Such a patta would not bind the Authorities under Regulation 1 of 1970.

*(Gadde Nagabushanamma Vs. Govt. of AP & others. 1999(5) ALD 430.)*

ii) A.P. Scheduled Area Land Transfer Regulations-Sec.3-The main purpose of A.P. Scheduled area Land Transfer Regulations 1 of 59 is to invalidate any transfer of lands situated in agency tracts in favour of non-tribal. In order to effectuate that intention, the Regulation has set up a separate machinery.- Ryotwari Settlement Regulations 2 of 70 was enacted to provide for the ryotwari settlement of certain lands in the scheduled area of Andhra Pradesh. Section 7 which also enacts that a non tribal shall not be entitled to a ryotwari patta, if his possession and occupation of the lands is void or illegal under the A.P. Scheduled Area Land Transfer Regulation 1 of 59.- The proper course to read these two Regulations is to allow both of them to operate while giving primary to the operation of Regulation 1 of 59. Where the Regulation 1 of 59 decides that possession and occupation of the non tribal is void that would prevail against any ryotwari patta that might have been granted under Regulation II 1970. Therefore any decision made under Regulation II of 1970 can only be **tentative** and **provisional** and would be subject to the decision under Regulation 1 of 59.

*(Kandula Brahmaiah Vs. The Deputy Collector (Tribal Welfare) Rampachodavaram, E.G. Dist. W.P. 2169/1981 Dated 10-12-1986-un reported.)*

iii) A.P. Scheduled Areas Land Transfer Regulations 1 of 59 ( as amended by Regulation II of 63 and 1 of 70-Sec-3- powers of Scope-A transfer

of immovable property situated in agency tracts made after the coming into force of the Andhra Pradesh Scheduled Area Land Transfer Regulation 1 of 59 or its amendment Regulation II of 63 or amendment Regulation 1 of 70 even if made in compliance with the provision of Transfer of Property Act, Indian Registration Act or Hyderabad Tenancy and Agricultural Lands Act or any other law applicable thereto is null and void, if it contravenes the provisions of Section 3(1) of the Land Transfer Regulation. The authorities mentioned there in can decree ejectment of the person claiming under such transfer to transferor or their successors or pass orders for disposing of the said property as directed therein.

*(Geddam Narasa Reddy Vs. Collector, Adilabad District. AIR 1982 AP-1(FB))*

iv) AP. Scheduled Area Land Transfer Regulations-The prohibition against transfer and the declaration of nullity enjoined under Amended 1959 Regulation having been held to be an emanation of Para 5(2) of the Fifth Schedule to the Constitution itself, the determination of invalidity declared under the provisions of Amended 1959 Regulation will have to be held as overriding any contrary determination under any other Regulation.

*(Samatha Vs. State of AP AIR 1997 SC 3297.)*

v) Appellant purchased the land from the allottee by a registered sale deed in the year 1962 – Alienation declared void in view of the contravention of the terms of the grant – Alienee cannot claim for the improvements made on the land as a bonafied holder – The State Act being a Special Act prevails over Section 51 of Transfer of Property Act.

*(Harishchandra Hegde Vs. State of Karnataka & others. 2004 (2) ALD 75(SC))*

vi) **LTR prevails over RoR Act** : A.P Scheduled Areas Land Transfer Regulation 1959 – Section 3 – Land in Scheduled Area – Transaction between two non-tribals, inquiry into validity of, scope of, when authority under Record of Rights Act had regularized sale in favour of petitioner under an unregistered sale deed –

**Held**-In view of overriding effect given to Section 3 (1)(a), over all other enactments in force in the agency tracts, enquiry contemplated under Regulation, an independent enquiry – Authority empowered under Section 3(1)(a) of Regulation, has to arrive at an independent conclusion on the parameters of law contained in Regulation – For said purpose he is not bound by finding, if any, recorded under any other enactment with regard to such transfer – Therefore, mere fact that competent authority under ROR Act had regularized sale in favour of petitioner, will not operate as a bar to make an independent enquiry – Protection, if any, given under Section 5-A(4) of ROR Act, not available to petitioner so far as enquiry under Section 3(1)(a) is concerned – Transfer if found in contravention of provisions of Section 3(1)(a) of Regulation, such transfer will not be saved by virtue of validation under provisions of ROR Act – (A.P Rights in Land and Pattadar Pass Books Act 1971, Section 5-A(4). (Para 16, 17, 20)

A.P. Scheduled Areas Land Transfer Regulation 1959 – Section 3 (As amended by Regulation 1 of 1970 on 3-2-1970) – Land in scheduled area – Transfer of, between two non-tribals, in violation of Regulation – Ejectment, order of, and direction for taking possession of said land disregarding certificate in Form-XIII(B) issued by competent authority under ROR Act, legality – Held, Special Deputy Collector found that petitioner failed to produce land revenue receipts for period from 1968-69 to 1987-88 to prove her possession from 15-5-1968 – Several interpolations and discrepancies found in revenue records as well as certificate in Form-XIII(B), only photo copy of which produced and not the original – Said Xerox copy contains no date to show form which date transfer has been validated in favour of transferee/petitioner – As per report of MRO, ROR Register tampered and name of petitioner entered without any valid record – In the circumstance, Special Dy. Collector cannot be said to have committed any error in disregarding certificate in Form-XIII(B) issued by competent authority under ROR Act and recording an independent finding that petitioner failed to produce her possession from 15-5-1968 – Impugned order cannot be held to be without jurisdiction – Writ petition dismissed – A.P Rights in Land and Pattadar Pass Books Act 1971, Section 5-A(4). (Para 21-13)

A.P. Rights in Land and Pattadar Pass Books Act 1971 – Section 5-A(4) – Transfer of land – Validation of, in favour of transferee, relevance of, in enquiry under Section 3(1)(a) of A.P. Scheduled Areas Land Transfer Regulation, scope – Validation of transfer under Section 5-A(4) shall be evidence of such transfer only against transferor or any person claiming under him – Hence, said validation cannot be said to be binding so far as enquiry under Section 3(1) (a) of Regulation is concerned – Therefore, action of Spl. Dy. Collector in ignoring certificate in Form XIII(B) cannot be found fault with – (A.P. Scheduled Areas Land Transfer Regulation 1959 Section 3) (Para 23)

A.P. Rights in Land and Pattadar Pass Books Act 1971 – Section 5-A(4) – Protection under – Not available, in so far as enquiry under Section 3(1) (a) of A.P. Scheduled Areas Land Transfer Regulation 1959, Section 3(1) – Land in Scheduled Area – Transaction between two non-tribals, inquiry into validity of, scope of, when authority under ROR Act had regularized sale in favour of petitioner under an unregistered sale deed. (*Pathipati Rangamma Vs. Agent to the Government at Khammam (District Collector), Khammam District and others. W.P 22643 of 2005. 2010 (4) ALD 769*)

**vii) Eligibility of Non Tribals to claim Ryotwari Patta in Scheduled Areas-** Section 7 – Non-tribal is entitled to Ryotwari patta only if he was in possession of the land for 8 years prior to the Regulation and such possession is not void or illegal under any other law – Petitioners have been ordered to be evicted under Section 87 of A.P. (AA) Hindu Religious and Charitable Endowments Act on the ground that they are encroachers of the land in the year 1965 and they have also voluntarily surrendered the said lands – Their plea that they were tenants of the temple negated – Hence their claim for Ryotwari Patta has been rightly negated by the Settlement Officer.

(*Ch. Satyanarayana and others V Sri. Seetharama Swamy Prabhunu Varu, Khammam dist. And other 1998 (5) ALD 27 = 1998 (5) ALT 98 = 1999*)

**viii) Eligibility for Ryotwari patta-Conditions: Regulation 7(1) proviso** – Ryotwari patta – Entitlement for, conditions, scope – Persons

claiming Ryotwari patta must prove/satisfy two conciliations (i) their continuous lawful possession not less than 8 years immediately before commencement of Regulation II/1970 and (ii) possession must be lawful under A.P. Schedule Areas Land Regulation or any other law for time being in force – Admittedly, father of petitioners acquired land from Freeholder with absolute heritable and transferable rights under unregistered documents dated. 9.11.1968 – Petitioners, therefore, cannot claim that they have satisfied first condition – Further, said permanent lease amounts to ‘transfer’ under 2(g) of A.P. Schedule Areas Land Transfer Regulation and such transfer of immovable property is prohibited – Order rejecting claim of petitioners for Ryotwari patta in respect of said lands, held, suffers from no illegality warranting correction by High Court under writ jurisdiction – Writ petition dismissed – (A.P. Scheduled Areas Land Transfer Regulation 1959, Regulation 2(g).

(*Thota Saidaiah and another V Commissioner of Appeals, Hyderabad and others (A. Gopal Reddy, J.) 2011 (3) ALD 501- 2011(3) ALT 240*)

#### **8. Applicability of LTR in Andhra Area to Telangana:**

A.P. Scheduled Area Land Transfer Regulations 1 of 59 was extended to the Scheduled areas in the Districts of Adilabad, Warangal, Khammam, and Mahbubnagar of Telangana area from 1-12-63.

i) Agency Tracts Interest and Land Transfer Act, 1917 – The 1959 Regulation came into force in the year 1959 in the districts of East Godavari, West Godavari and Visakhapatnam – Purchase of land by a non-tribal in the year 1960 situate in revenue divisions of Nugur and Bhadrachalam which were then part of East Godavari District is hit by the Regulation and therefore void.

(*Vanka Venkanna Vs. Special Deputy Collector, (TW), Paloncha, Khammam dist. & others. 2001 (2) ALD 372.*)

ii) A.P. Scheduled Area Land Transfer Regulation 1 of 59 came to be applied to Telangana area on 1-12-1963 – It was held that even if a delivery of possession in pursuance of the contract of sale took place it was invalid and unlawful on account of failure to secure permission under Section 47 of A.P. (TA) Tenancy and Agricultural Lands Act(21 of 1950). Such possession and transfer could not be validated under

Section 50-B of the said Act. Therefore, it necessarily follows that if the transferee or alienee did not avail himself of this opportunity of getting his alienation and possession validated under Section 50-B, he should suffer the consequences, since the transfer and delivery of possession in his favour remained invalid and unlawful. It is further held that there was no indefeasible title or right created in the petitioner before 1-12-1963 on which date the Regulation came to be applied to Telangana area. After 1-12-1963 overriding effect of Section 3 has come into force. Section 3 of the Regulation had, on and from, 1-12-1963, overriding effect despite any other enactment, rule or law in force in agency tracts in respect of transfer of immovable property situate in scheduled areas by a tribal in favour of a non-tribal. These provisions had no retrospective effect. But, then there was no indefeasible right in the petitioners by 1-12-1963. What all they had by that date was a contract of sale and unauthorized and illegal possession of the land. By virtue of Section 3 of the Regulation the agreement of sale and the subsequent sale deeds, which the petitioners obtained, were null and void.

*(Meeran Pocham Vs. The Agent to the State Government. AIR 1978 AP 242. (DB)*

iii) A.P. Scheduled Area Land Transfer Regulation 1959, Section 3(2), A.P.(T.A) Tenancy and Agricultural Lands Act, section 47 and Tribal area Regulation 1359 F. Sections 2 and 4 and Rule 42 of Rules and Regulations of 1359 F- Non obtaining of Sanction of Agent for sale of land in Tribal area by a tribal to a non tribal- Sale is void- Order of eviction of such non tribal by Authority under Land Transfer Regulations- valid.-

**Held** - Under the Tribal Area Regulation and the Rules, the Agent and Sub Agent are constituted as authorities in respect of sale of lands, houses, or buildings situated in the Notified Tribal Areas. The Agent or the Sub-Agent is competent authority to decide the question and their action is conclusive and final. If the sale is found to be contrary to Section 3 of the Scheduled Area Land Transfer Regulation or any other law then the authorities would be competent to take action under section 3 of the Scheduled Area Land Transfer Regulation. Therefore the order of ejection made by the Special Deputy Collector is perfectly within his jurisdiction.

*(Ch.Bondu Mera Vs. District Collector, Adilabad.-ALT NOC 114.)*

### 9. When Principle of Resjudicata does not apply?

i) A.P. Scheduled Areas Land Transfer Regulation, 1959 as amended by Regulation I of 1970, Sec.3 – Contravention of provisions of Regulation – Complaint can be made by Special Deputy Tahsildar (TW) or by any third party.

A.P. Scheduled Areas Land Transfer Regulation, 1959 as amended by Regulation I of 1970, Sec.3 – Resjudicata- Initially Special Deputy Tahsildar complained to Special Deputy Collector of contraventions of Regulations – Held that orders passed in the first proceedings initiated under the Regulation will not operate as Resjudicata if the later proceedings were initiated by third party or by the same party on the basis of any further material and in the present case there is no fresh or new material warranting a contrary view than the one taken earlier- Order does not refer to any complaint alleged to have been made by third respondent and participation of third respondent is not established- Writ Petitions are allowed- Impugned orders are set aside.

*(N.Durga Rao & another Vs. Special Deputy Collector (TW) Kota Ramachandrapuram W.G.Dist. & others. 2003(6) ALD (NOC) 68)*

ii) A.P. Scheduled Area Land Transfer Regulations- Section 3(1) – Earlier proceedings initiated on the ground that the first respondent acquired the land in contravention of Section 3(1) and in the said proceedings the acquisition was upheld and it was confirmed by High Court also – Subsequently, the present proceedings were initiated on the ground that the transfer of the said lands by first respondent to others is in contravention of Section 3(1).

Held, the earlier proceedings do not operate as Resjudicate in the present proceedings – The question involved in the earlier proceedings is distinct and different from the one on the basis of which the present proceedings are initiated – Further in the earlier proceedings the vendee was not a party – In the circumstances the learned single Judge erred in declaring that the present proceedings are not maintainable.

*(Special Deputy Collector (TW), Rampachodavaram, E.G.District & others Vs. Datla Venkathaji Raju & others. 2003 (1) ALD 386 (D.B))*

iii) A.P. Scheduled Area Land Transfer Regulation-Sec.3-.Mere fact that on the earlier occasion a petition filed under section 3 of A.P. Scheduled Area Land Transfer Regulation 1959, was dismissed does not confer any right on the petitioner, so long as the Statutory order subsists, Viz. the void sale subsists. The Statute prescribes that any transaction entered into between a tribal and non-tribal or between non-tribal and a non-tribal, they are void per se. Therefore the mere fact that on the earlier occasion it was dismissed does not confer any right on the Writ Petitioner. The action taken by the respondent officers are perfectly within their jurisdiction and can not be interfered with.

*(Ch.Satyanarayana Vs. The Agent to Govt. & Dist. Collector Visakhapatnam. W.P. 6065/1979-unreported.)*

iv) A.P. Scheduled area Land Transfer Regulations 1 of 59 as amended by 1 of 70- The principle resjudicata or a principle analogous there to shall be applied with caution and circumspection in dealing with a case arising under the Regulation meant for the protection of Tribes.

*(Gaddam Raghavulu Vs. Agent to Government. 1994(2) An.W.R 216.)*

v) A.P. Scheduled Areas Land Transfer Regulation 1959, Section 3(1) and (2)(a) – A.P. Scheduled Area Land Transfer Rules, 1969, Rule 7(2) – Ejectment of non-tribal – Land in Scheduled Area – Show cause notice – Principle of resjudicata – Proceedings for ejectment can be initiated either on application by anyone interested or suo motu by competent authority – Proceedings earlier taken up for ejectment suo motu – Dropped – Fresh proceedings taken upon a complaint by tribal that writ petitioner is in possession of land in contravention of Section 3(1) of the Regulation and show cause notice issued – Parties to present proceedings different – Tribal may produce fresh material to prove illegal possession of petitioner – Fresh proceedings not illegal – Regulation meant for protection of tribes – If earlier proceedings are dropped for want of sufficient material, it would not operate as resjudicata for initiating fresh proceedings – Show cause notice issued – Neither arbitrary nor illegal – Truth or otherwise of allegations in fresh proceedings can be decided only after

due enquiry – no interference warranted at the threshold – Writ petition dismissed with liberty to writ petitioner to submit explanation to impugned show cause notice.

*(Padmanabhuni China Subba Rao Vs. Special Deputy Collector(TW), West Godavari District and others. 2006(6) ALT 44)*

vi) Section 3 – Order under – Review of – Not permissible, in absence of an enabling provision in Regulation – Subsequent proceedings – Not barred, if initiated on a different cause of action and on different set of facts – Earlier proceedings dropped on ground that transaction was between non-tribals prior to 1970 – Said order does not refer to transactions in favour of petitioner but refers only to transaction between JC and SK and same was upheld on ground that it took place in 1907 long prior to Regulation coming into force – Fresh proceedings initiated against petitioner pursuant to purchase of land by petitioner from sons of S.K. in 1969 under registered sale deed dated 1973 – Transaction being subsequent to coming into force of Regulation, petitioner ordered to be evicted and resumption of land to Government directed – Impugned proceedings, initiated on a different cause of action and on different set of facts, held, would not amount to review of earlier order (HC DB).

vii) Section 3 – Scheduled land – Transaction between non-tribals – Complaint against, dismissed as transaction was between non-tribals prior to 1970 – Subsequent proceedings in respect of same land but in relation to different transaction – Not barred by resjudicata – Identity of subject matter in physical sense, but no identity in juridical sense, as transactions, subject matter of dispute in two proceedings, distinct and separate – Question of law or issue of fact arising in subsequent proceedings, different from that arising in former proceedings – Decision in earlier proceedings, therefore, cannot operate as resjudicata in later proceedings – [A.P. Agency Laws 1924, Rule 8; Civil Procedure Code 1908, Section 11] (HC DB).

*(GNageswara Rao @ China Nageswara Rao Vs. Government of A.P. and others. 2007 (6) ALD 621)*

#### 10. Validity of Agreements to sale and subsequent sale deeds :

i) Section 3(1)(a) as substituted by Regulation 1 of 1970 and Section 2(g) – ‘Transfer’ – Meaning of – Transfer includes contract to sell – Transfer of lands in Agency tracts by non-tribals to non-tribals – If sale



deeds are executed after 3-2-1970 when Section 3(1)(a) has come into force and if possession of lands is delivered pursuant to execution of sale deeds, transfer is null and void – If agreements of sale were executed prior to 3-2-1970, transfer is not hit by Section 3(1)(a) of the Regulation – In the instant case, agreements of sale alleged to have been executed prior to 3-2-1970 not produced – Sale deeds showing delivery of possession of subject lands on date of execution of sale deeds – No reference to alleged agreements of sale in sale deeds – No evidence in proof of petitioners' possession or their paying land revenue prior to 3-2-1970 – Transfer of lands in Agency tract in favour of petitioners (non-tribals) by sale deeds executed after 3-2-1970 is hit by provisions of Section 3(1)(a) of the Regulation.

*(Kakarla Nageswara Rao & others. Vs. Govt. of A.P. rep. by its Secretary (TW) dept. Hyderabad & others 1995 (3) ALT 164.)*

ii) A.P. Scheduled Area Land Transfer Regulations-Sec 2(g) – Sale of lands in Telangana area by a Tribal to a non tribal pursuant to an agreement before 1-12-1963 and possession obtained after that date without getting the sale deed registered, is invalid and purchasers are liable to be evicted. *(Bhojajee Vs. Special Deputy Collector 1976 ALT 42 (NRC)*

iii) A.P. Scheduled area Land Transfer Regulations- The documents which are necessarily to be registered but not registered are not admissible in evidence and such documents can be used for collateral purpose only.

*(Mohammad Rasool Vs. Secretary Social Welfare Department, Govt of AP.W.P.No.9429/89 Dt:19-8-98 (A.P.High Court-unreported)*

iv) A.P. Scheduled Area Land Transfer Regulations-Sec3-No mention of alleged agreement of sale dated 15-12-1969 in the sale deed which has been executed on 18-3-1971. The purchase admittedly is after Regulation 1 of 70 and then invalid under law. Once genuineness of the alleged agreement for sale is doubted entire transaction becomes void. A person who does not move a court of law with clean hands and is doubted to have fabricated some document to raise a plea can't be encouraged to seek relief under article 226 of constitution of India.

*(W.A.No.899/97 Dt:20-8-97. Karri Venkat Reddy Vs. The Commissioner of Survey and Settlement and Land Records-Govt. of A.P.(A.P.High Court) (DB) un reported.)*

v) A.P. Scheduled Area Land Transfer Regulation-Sec.3- The agreement of sale alleged to have been entered into on 3-5-1960 on a stamp paper of a denomination of Rs. 1.50 which was styled as (Vikrya Patramu) which was held to be a sale deed and therefore in violation of section 54 of Transfer of Property Act since it was not registered. Though it was pleaded on behalf of the non-tribals that the sale has taken place prior to the commencement of the Regulations, but the fact findings authorities gave a clear finding on the basis of the revenue records that the sale was after the commencement of the Regulations, and the non-tribals came into possession according to the evidence on record only after the commencement of the Regulations- Held, therefore, that the alleged transfer took place after the commencement of the Regulation – Sale was hit by the Regulations and accordingly was illegal and void.

*(Vaddi Veeraiah Vs. The agent to Govt. Khammam & other 1996(1) ALD 107 (DB)*

#### **11. Doctrine of adverse possession not applicable to Non Tribals:**

**(i) Limitation Act is not applicable to claim rights over land by Non Tribals:**A.P. Scheduled Area Land Transfer Regulation 1 of 59-Para 7-object – Alienee from a tribal-whether can claim adverse possession taking advantage of the Limitation Act.

**Held-** Paragraph 7 of the Regulation was never intended to attract the provisions of the Limitation Act in regard to limitation for filing suits for possession or for extinction of title by adverse possession. Paragraph 7 was apparently intended to attract the general provisions of the Limitation Act such as those which enable courts to excuse delay for sufficient cause or to exclude the time in obtaining certified copies etc, To hold that the alienee from a tribal can take advantage of the provisions of the Limitation Act and claim title by adverse possession would be inconsistent with and repugnant to the whole scheme of the A.P. Scheduled Areas Land Transfer Regulation.

*(Ramji Vs. Collector, Adilabad and others. W.P.No.3096 of 1975 dt.11-6-1975 ALT(NOC-85)*

**(ii) Limitation Act is not Applicable to claim rights over land by Non Tribals:**

Limitation Act (36 of 1963), Arts. 65, 27 – Constitution of India, Schedule 5, Para 5(2) – Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulations (1956), Regn,3, Para 7-D (as inserted by Orissa Regn. No. 1/1975) – Acquisition of title by adverse possession – Non-Tribal prohibited to acquire title over property belonging to tribal qua Orissa Regulations – General Law viz. Limitation Act cannot defeat Orissa Regulation which is Special Law. Maxim – Specilia Generalibus Derogant.

A tribal may acquire title by adverse possession over the immovable property of another tribal by reference to Para 7D of the Regulations read with Art. 65 and S.27 of the Limitation Act, 1963, but a non-tribal can neither prescribe nor acquire title by adverse possession over the property belonging to a tribal as the same is specifically prohibited by a special law promulgated by the State Legislature or the Governor in exercise of the power conferred in that regard by the Constitution of India. A general law cannot defeat the provisions of special law to the extent to which they are in conflict, else an effort has to be made at reconciling the two provisions by homogenous reading (Para 28)

*(Amrendra Prapat Singh, Appellant Vs. Tej Bahadur Prajapati and others, AIR 2004 Supreme Court, page 3782.)*

**12. Burden of Proof always lies on Non Tribal in LTR cases:**

i) A.P. (Scheduled Area) Land Transfer Regulation, 1959 – Section 3(1) – Writ petition filed questioning the notice issued by the competent authority to the petitioner alleging that he is in possession of the land in contravention of Section 3 of the Regulation – Writ petitioner got into the possession of land having been allotted to him by his father-in-law – The fact that earlier proceedings under the Regulation were initiated against the father-in-law and they were dropped does not prevent the competent officer to initiate proceedings under the Regulation when the writ petitioner is found to be in possession of the land – There is a total bar on the alienation of the properties situated in the agency tracts by a person, whether or not such person is a member of scheduled tribe.

Further the provisions of clause(b) in an unmistakable language provides that if any immovable property situated in the Agency tracts is found to be in the possession of a person who is not a member of scheduled tribe such a person should be presumed to have acquired such land through a transfer made to him by a member of a scheduled tribe unless and until contrary is proved-Whether the writ petitioner has the evidence to dispel the presumption incorporated in Clause (b) or not is not the concern of the Court at this stage and it is for the Special Deputy Collector(T.W) to decide that question on merits of the matter holding enquiry and after giving opportunity to both sides-Further, no writ can be issued against the mere show-cause notice, when it is issued by a competent person.

*(Special Deputy Collector, (TW), Palwancha Vs. Gummadapu Mohan Rao & another. 2002(4) ALD 132 (DB)*

ii) A.P. Scheduled Area Land Transfer Regulations-Section 3(1) and Agency Tracts Interest and Land Transfer Act, 1917, Sec.4 (1) – Lands purchased from a non-tribal by a non-tribal in a tribal area in violation of the Act – Sale is void – Burden lies on purchaser to establish that the purchase was validly made.

**Held:** Any transaction made after August 14, 1917 by the hill tribes to a non-tribal is absolutely null and void. Therefore, any person other than a hill-tribe who purchased the property from a hill-tribe has to establish that he purchased from a non-hill tribe or that the consent of the Agent was obtained. In law, there is no presumption as to when the transaction of sale or purchase has taken place. In view of the peremptory language in Sec 4(1) of the Act, raising of presumption under Sec.3(1)(b) of the Regulation is of little consequence and the burden is always on the purchaser to establish that the purchase was validly made.

*(Penmetsa Ramabhadri Raju & others. Vs. State – Rep. by the Special Deputy Tahsildar (TW) No.1 Eluru W.G Dist. & others.1988 (1)ALT 411.)*

iii) A.P. Scheduled Area Land Transfer Regulation 1959 – Section 3(1) – Land in scheduled area – Possession of a non-tribal, presumption under S. 3 (1)(b) as to contravention of Section 3(1)(a), burden of proof – Burden of proof on person who is in possession of land situated in agency

tracts to establish by adducing acceptable evidence to satisfaction of Special Deputy Collector that his possession is not in contravention of Section 3(1)(a) – In absence of such material, it is always open to Authority to draw a presumption under S.3(1)(b) that land has been acquired through a transfer made to him by member of scheduled tribe. (*Pathipati Rangamma Vs. Agent to the Government at Khammam (District Collector), Khammam District and others. W.P 22643 of 2005. 2010 (4) ALD 769 para 11,16*)

### 13. Any interested person can prefer appeal under LTR:

i) A.P. Scheduled Area Land Transfer Regulations-Sec3 –The maintainability of appeal by a third party who is not the party to original proceedings decided—The modes of initiation of proceedings provided under Land Transfer Regulation are (a) an application by any interested person,(b)an information given in writing by a public servant and c) suo motu-In the instant case it is not in dispute that the Petitioners are not parties to proceedings before Special Deputy collector.-Ordinarily a person who has participated in original proceedings and suffered an order, is conferred with the right to prefer an appeal, to a superior authority or forum- In view of the object of Land Transfer Regulations it shall be appropriate to allow a person though not a party to the original proceedings on establishing the nature of interest he intends to canvass- (*Sivudu Venkatasamy Vs. Agent to Government, West Godavari District at Eluru and others, L.Narasimha Reddy, J. 2004 (1) ALD 778*)

### 14. No Limitation to implement Orders passed under L.T.R.:

i) A.P. Scheduled Area Land Transfer Regulations 1 of 59-Section 28 of the Limitation Act (IX of 1908) Could not be invoked for application and appeals – Officers exercising the jurisdiction in respect of the application for ejectment under the Act and the Regulation are persona designate and not Civil Courts.

(*M.Basavaraju Vs. T.Naganna Dora A.L.R 1969 A.P 1083.*)

ii) **Implementation of order-Rule 7(4)** – Restoration of possession – Order for restoration be executed like a decree for ejectment passed by civil Court. A petitioner by filed for execution of order and parties being

ejected entitled to notice if order was passed two years before filing execution petition. Order Passed for restorations of lands to 3<sup>rd</sup> respondent by Special Deputy Collector and Agent to Government as confirmed in writ petition. Even without any petition by 3<sup>rd</sup> respondent for execution of order and even without notice to petitioners impugned memo to eject petitioners and put 3<sup>rd</sup> respondent in possession of lands mentioned therein even though those survey numbers are not found in the orders passed for restoration. Impugned memo set aside. Matter remanded to follow the procedure prescribed in Rule 7(4) of the Rules while ordering delivery of possession of land ordered. As it is stated that petitioners were already dispossessed, directions given to restore possession of lands to petitioners.

(*Mamillapalli Chinakoteswar Rao and others Vs. Mandal Revenue Officer, Buttaigudem Mandal, W.G.District and others; 2005 (3) ALT 88*).

### iii)No Limitation for enforcement of a decree or order:

Agency Tracts Interest and Land Transfer Act, 1917 (1 of 1970)-Section 4 –No period of limitation is prescribed for enforcement of a decree for execution before the Agent – Appeal against order in execution – Maintainable.

**Held:** The Agency Tracts Interest and Land Transfer Act aims at preserving the immovable property in the agency tracts to the members of the hill tribes only and nullifying transfers which offend those provisions and restoring the lands by the process of decreeing ejectment, which results in restoration of the lands. Thus, decreeing ejectment and restoration of the lands and putting that order into action seem to be parts of the same process and are not meant to be demarcated as if the prior portion of the action should result in a decree and the latter concerned restoration should be by means of an execution of the decree.

Section 4 (3) of the Act clearly mentions that not only a decree but an order under sub-section(2) can be appealed against. And, if it is remembered that by virtue of sub-section(2) not only a decree for ejectment could be passed but also order while proceeding to restore the properties in pursuance of the order of decree for ejectment, there can

be no objection to maintainability of an appeal against an order passed in execution.

The orders passed under Section 4(2) of the Act are not to be treated as decrees in ordinary parlance as falling within the definition of that word in the Civil Procedure Code. They are to be considered only as decree or orders in Special proceedings which not only determines but enforces it itself. Therefore, even if an application for delivery of possession is to be taken to be in the nature of an execution petition, it is not to execute a decree as defined under the Civil Procedure Code to which the Limitation Act applies. Therefore, no period of limitation could be said to have been prescribed for moving the Agent to enforce such a decree for ejection as falling under Section 4 of Act. 1 of 1917.

*(M.Mangaraju Vs. Pandu Dora & another (Munikannaih, J.) 1963(1) An. W.R.339)*

#### 15. Maintainability of Writs if Possession is in dispute:

i) A.P. Scheduled area Land Transfer Regulations-The writ petitioner raised cashew nut crop in the disputed land. However the tribal people did not allow the petitioner to harvest the crop- The petitioner sought intervention of High Court- The dispute involved in the W.P is of civil nature. If the person is the lawful owner and is in possession of the lands in question he can approach the competent civil court to restrain encroachment as other to interfere with his possession. The petitioner can't approach High Court straight away under Article 226 of constitution and seek police protection.

*(Isukupalli Suryanarayana Vs. SHO Devipatnam PS. W.P.No.4109/2000 Dt:15-3-02 (A.P.High Court-unreported.)*

ii) A.P. Scheduled Area Land Transfer Regulations 1 of 59 as amended by 1 of 70-Sec-3-There is a rival claim with regard to possession of the lands in question. In view of the factual disputes with regards to possession over the land in question between the parties no enquiry can be conducted by the High Court in exercise of powers under Act 226 of the constitution of India. It is open for the parties to approach competent civil court or any other appropriate forum for relief.

*(Valala Venkata Reddy Vs. District collector, E.G.Dist. and others WP No. 13114 of 2002 Dated: 3-11-2003. (un reported)*

iii) **Maintainability of Writ when Statutory Notice issued by SDC under LTR:** Section 3(1) and (2) – Notice issued to the first respondent why he should not be evicted in view of the transfer of land to third parties – Such a statutory notice cannot be interdicted by High Court under Article 226 – Even though the acquisition of the Scheduled land by the first respondent by way of transfer was held to be legal in the earlier proceedings, it would not come in the way of the statutory authority to take action under Section 3(2) if it comes to notice that the transfer has been made in violation of Section 3(1) of the regulation  
*(Special Deputy Collector, Rampachodavaram Vs. Datla Venkatapathiraju, 2002 (4) ALT 669)*

iv) **Powers of High Court in altering the list of Scheduled Villages:-** Writ Petition filed for a direction to delete the village in which the land in question is situated, from the agency area – Such a direction cannot be given by the court – It has to be done only by the appropriate authority. The amendment to Regulation 1 of 1970 having been issued by the Governor in exercise of power conferred upon him under Article 244 read with Fifth Schedule of the Constitution of India is a piece of legislation. It is only for the appropriate authority to amend the legislation and it is not for this court to exercise its jurisdiction under Article 226 of the Constitution of India to issue a writ in the nature of mandamus directing amendment thereto. No writ in the nature of mandamus can be issued by this Court in a case of this nature.

*(Bandaru Chinasurayya Vs. Union of India and others, 2002 Suppl. (2) ALD 776 (DB).*

v) Eviction – Order of-, passed by Special Deputy Collector declaring alienation in favour of petitioner as being in contravention of AP Regulation 1 of 1959 r/w AP Regulation 1 of 1970 – Validity of-, challenged on ground that proceedings initiated earlier by Special Deputy Collector for eviction of petitioner from lands in her occupation were dropped by him concluding that there is no contravention of provisions of said Regulations – Maintainability of writ petition, questioned on ground of availability of alternative remedy of appeal.

*(Damera Chittemma Vs. Special Deputy Collector (Tribal Welfare), Bhadrachalam and others, (Dr.Seshasayana Reddy, J.) 2013(3) ALD 402 = 2012 (6) ALT 254)*

## 16. Powers and Limitations of officers under LTR and Settlement Laws :

**1) Notification issued -ITDA Project Officer as an Appellate Authority Under LTR- Upheld.:** Project Officer, of Integrated Tribal Development Agencies – Designation of, as Additional agents – No illegality or infirmity – Notification regarding, suffers from no vice or invalidity by reason of not being assented to by President of India under Paragraph 5(4) of Fifth Schedule to Constitution – It is competent for District Collector/ Agent to Government to transfer cases pending before him including Appeals to Additional Agent – A.P Scheduled Areas Land Transfer Regulation 1959 (As amended by Regulation 1 of 1970), Section 3(2).

A.P Scheduled Areas Land Transfer Regulation 1959 – Section 3(2) (As amended by Regulation 1 of 1970) – Project Officer, ITDAs – Designation of, as Additional Agents – Notification regarding, in G.O.Ms.No.193, dated 17-4-2002 – Suffers from novice or invalidity by reason of not being assented to by President of India under Paragraph 5(4) of Fifth Schedule to Constitution – A law made by State Legislature, when applied by Governor with certain modifications, same does not require assent of President of India under Paragraph 5(4) of Fifth Schedule – [Constitution of India, Article 244(1), Fifth Schedule Paragraph 5(1) – A.P District Collector's Powers (Delegation) Act 1961, Section 3.

A.P. District Collector's Powers (Delegation) Act 1961 – Section 3 – Applicability of, to scheduled areas – Section 3(1) of Act does not bar or restrict power of Governor to apply same with modification as to its applicability and enforceability in agency areas as per Paragraph 5(1) of Fifth Schedule – By issue of impugned notification in G.O.Ms.No.193, dated 17-4-2002, Act applied to scheduled areas with modification that said Act will apply to 'laws' in relation to entries in List II and List III of Seventh Schedule as well as 'laws' made by Governor under Paragraph 5(2) of Fifth Schedule – Held, therefore, that by reason of impugned notification, Section 3 of Act would also apply to Regulations 1 of 1959 made by Governor under Paragraph 2 of Fifth Schedule – [Constitution of India, Article 244(1), Fifth Schedule Paragraph 5(1), (2), (4); A.P. Scheduled Areas Land Transfer Regulation 1959].

A.P. District Collector's Powers (Delegation) Act 1961 – Section 3 – Project Officers – Designation of, as Additional Agents to Government for purpose of Regulation 1 of 1959 and to exercise powers of agent under said Regulation – No illegality or infirmity and violates no law – A.P Scheduled Areas Land Transfer Regulation 1959, Section 2 (b).

A.P. Scheduled Areas Land Transfer Regulation 1959 – Section 2 (b) – Agent to Government – Need not always be a District Collector – Power given to State Government to designate any officer as an Agent to Government, in which event, such officer designated or appointed as an Agent shall be authority for purpose of Regulation as well as beign an appellate authority under Section 3(3)(a)(ii) of Regulation. [Para 35].

A.P. District Collector's Powers (Delegation) Act 1961 – sections 3, 3(3)(a)(i), 3(3)(a)(iii) and 3(2)(a) – Transfer of cases – By District Collector/Agent to Government pending before him to Additional Agent to Government – Legality – Held, on a true interpretation of Rule 3(1) read with Rule 11(2) of the Agency Rules, power of Agent to Government to transfer suits and appeals takes in its fold power to transfer appeals pending before him to an Additional Agent – District Collector as Agent had exercised regulatory powers – No illegality can be attributed to his action in transferring appeals pending before him to Additional Agent – [A.P Agency Rules, Rules 2(3), 3(1) and 11 (2)].

A.P. General Clauses Act 1891 – Sections 3(6) and 3(8) – 'Collector' – District Collector – Definitions – Officer who is Chief Officer in charge of Revenue Administration of a District is District Collector – When such powers are conferred on an Officer who is authorized to exercise powers of Collector, such officer also comes within definition of a District Collector. [Para 18]

*(Kurapati Lakshmiaiah and others Vs. Additional Agent to Government and Project Officer, ITDA, Bhadrachalam, Khammam and others, W.P.No. 1241 of 2005, 462 of 2006 and 1427 of 2007 and others [2008 (1) ALD 840 (DB)]*

## 2) Commissioner's Revisionary Power To Cancel Erroneous Settlement Pattas:

The facts leading to the writ petition are that the lands which are of an extent of 360-55 cents are situated in agency areas of East Godavari

District. The settlement Officer without holding any property enquiry granted settlement pattas under Ryotwari Settlement Regulations 2 of 1969 in favour of Non-tribals. The actual facts revealed both by the inspection reports of the team appointed by the Government and of Sri Achanta clearly establish that there is a thick forest growth with the trees, the gradient of the lands are higher than 10% and there is no cultivation in the area of Ac.360-55 cents as claimed by the settlement patta holders. Then the commissioner proposed suo motu enquiry against the orders granting settlement patta. This was questioned by the Writ Petitioners.

i) A.P.Muttas (Abolition and Conversion into Ryotwari) Regulation (2 of 1969), Sec.4,8,9-Suo motu revisionary powers under Sec.4-They can be exercised against order granting ryotwari patta- Not confined to administrative orders -Held that the Suo motu revisionary powers conferred by Sec.4(5) on the Director of Survey, Settlements and the Commissioner of Survey, Settlements and Land Records can be exercised against the order of the Settlement Officer granting ryotwari patta under Sec.8. From the fact that Sec.9 provides for an appeal against an order granting patta to the Director and from the order of Director further appeal to the Commissioner and the absence of Specific provision providing for revision of such an order can not be inferred that by implication of the revisionary jurisdiction conferred on the Director and the Commissioner under Sub-Sec (5) of Sec.4 can not be exercised in respect of judicial orders like granting pattas, but it is only to control the subordinate authorities on the executive and administrative sides. Appeals and revision are two distinct and separate powers and remedies and one cannot exclude the other. The revisionary power cannot therefore be conferred only to orders of administrative nature. Such a power can be exercised to correct any order passed by the subordinate authority, be it administrative or judicial.

*(Baliseti Subbaraju & others Vs. Commissioner of Survey, Settlements & Land Records, Hyd- AIR 1985 A.P 329)*

ii) **Revision Powers of Commissioner:** Section 5(c) – Revision under form of exercise of administrative control and not an independent source of revision from point of view of an aggrieved party – It is for

Commissioner of Survey and Settlement, to feel necessity of undertaking a revision, of order of inferior authorities, either suo motu, or, where he is fed with necessary information, in form of application by an aggrieved party – Discretion of Commissioner, in exercising power under Section 5(c) far wide, and he is not guided by principles, that govern exercise of powers under regular appeals, under Section 9 of Act – REVENUE LAWS – Ryotwari lands.

*(Duddukuri Satyanarayana and another V. Mandal Revenue Officer, Bhadrachalm Mandal, Khammam District and another 2006 (3) ALD 228 = 2006 (6) ALT 126)*

iii) **No Revision permissible – Once the order passed:** Section 3 – In the year 1980 the Special Deputy Collector dismissed the proceedings initiated against the petitioner under Section 3 of the Regulation – Again in the year 1988 fresh proceedings initiated by Deputy Collector who while upholding transactions in respect to particular areas held the other transactions not valid, ignoring the earlier order passed in the year 1980 – Appeal filed by the petitioners dismissed by the Agent to the Government – Subsequently a revision was filed before the Minister who allowed it by his order dated 2-7-1994 – But the staff instead of communicating the orders to the petitioners put up an office note and obtained orders of remand from the succeeding Minister without giving notice to the petitioners – Held, illegal – when once a quasi judicial order is passed by an authority, it cannot again be revised *(Datla Narasimha Raju and others V. Principal Secretary to Government of Andhra Pradesh, Special Welfare Dept. and others 2000 (2) ALD 365)*

iv) **Revision of its own order not permissible:** Section 6 – review – Order passed under the Regulation cannot be reviewed in the absence of an enabling provision in the Regulation – Order of the Special Deputy Collector rejecting the application for eviction of the appellant made in the year 1981 became final. – Fresh proceedings for eviction cannot be initiated.

*(Chintalapati Ramalinga Raju V. District Collector, Eluru, W.G District and another 2000 (4) ALD 443 = 2000 (2) ALT 155 (DB)*

v) **Scope of Revision Authority to interfere with Order-Section 6 – Revision – Order in revision for resumption of land while dismissing revision. Sustainability of Sale of land to petitioner under an agreement of sale by father of 5<sup>th</sup> respondent. On a complaint made by father 5<sup>th</sup> respondent, Special Deputy Collector (TW) ordered eviction of petitioner holding that transfer of land is in violation of the Regulation. On appeal by petitioner. Agent to Government set aside the eviction order holding that the sale was between two non-tribals on the relevant date and that the sale was not hit by Regulation. Revision filed by 5<sup>th</sup> respondent was dismissed by Government. However, while dismissing revision, ordered to several facts not adverted to either by primary authority or appellate authority. Revisional authority should confine himself to the record. It feels that fresh material be taken into account, the matter be remanded for fresh consideration. Going beyond that record of original proceedings vitiates the revisional Jurisdiction. Impugned order of Government set aside. Purchaser of the property in question during pendency of writ petition who filed another writ petition has to work out his remedies by filing a suit or by initiating proceedings before Special Deputy Collector. (*Kurra Butchamma and another Vs. Government of A.P., Social Welfare Dept. (Tribal Welfare) and others; 2006 (3) ALT 591*)**

vi) **LTR provisions and ST notification: No retrospective effect**

i) Constitution of India Schedule 5, para 5(2) – Andhra Pradesh Scheduled areas Land Transfer regulation (1 of 1959), Sec. 3 (as it stood before and after amendment in 1963 and 1970) – Prohibition to transfer of immovable properties in scheduled area – operates prospectively – Does not adversely affect completed transactions of transfer which have taken place prior to enforcement of Regulations.

Andhra Pradesh (Schedule Areas) Land Transfer Regulation (1 of 1959), S.3(2)(a), S.3(1)(a) – Eviction of transferee under prohibited transfer and restoration of possession to transferor – S.3(2)(a) cannot be applied to evict transferee under transaction which was completed before enforcement of Regulations.

(*Deputy Collector Vs. Venkata Ramanaiyah another A.I.R. 1996 S.C. 224.*)

ii) (A) A.P. Scheduled Areas Land Transfer Regulation (1 of 59) (as amended by Regulation 2 of 1963 and 1 of 1970), S.3 – Applicability – S.3 (1) is not retrospective in operation – Transfer of land by Tribal to Non-Tribal prior to commencement of the Regulation – Dispute as to – Cannot be adjudicated by Authorities under Sec.3(2) – (i) Hyderabad Tenancy and Agricultural Lands Act (21 of 1950), Sections 47, 50B; (ii) T.P. Act (1882), S.53A;; (iii) Constitution of India, Act, 244(1) and Sch. V. Para 5 (1)).

Section 3(1) of the Regulation I of 1959 and its amendments by Regulation II of 1963 and 1 of 70 have no retrospective operation do not affect transfers made prior to the said Regulation or its amendments coming in to force and the authorities under S.3 (2) of the Regulation have no jurisdiction to pass orders in relation to the immovable property, covered by such transfers.

The validity or otherwise of the transfers made prior to S.3(1) or its amendments by regulation II of 1963 or 1 of 1970, coming into force, cannot be adjudicated upon under S.3(2) of the Regulation and the same has to be challenged in an appropriate forum constituted for deciding disputes relating to immovable property situate in Scheduled Areas.

(B) A.P. Scheduled Areas Land Transfer Regulation (1 of 59) (as amended by Regulation 2 of 1963 and 1 of 1970), Sec. 3 (2)(a) – Authorities under the Regulation – Powers of – Scope – Transfer of land by Tribal to Non-Tribal – Competent Authority can pass order of ejectment – Cannot determine whether protection under T.P. Act is available in absence of certificate under Tenancy Act – (i) T.P. Act (1882), Sec. 53-A; (ii) Hyderabad Tenancy and Agricultural Lands Act (21 of 1950), Ss. 47, 50-B).

The authorities under Sec.3 (2)(a) of the Regulation are conferred special or exclusive jurisdiction to determine the limited question whether the transfer of immovable property situated in the agency tract is made in contravention of the provisions of S.3(1) of the Regulation and any other question is outside the scope of such a proceedings under S.3(2)(a) of the Regulation.

(*Gaddam Narsa Reddy & others, Vs. Collector, Adilabad Dist. & others, AIR 1982 AP 1 (F.B).3*)

iii) Andhra Pradesh (Scheduled Areas) Land Transfer Regulations, 1959 (As amended by Regulation 1/1970) – Section 3(1) – Lands in question situated in Telangana area – Transfer of lands in Telangana area from tribals to non-tribals prohibited under Regulation 1/1970 which is only prospective in nature – Deputy Collector acting under Section 3 of the said Regulation cannot interfere with the alienations effected prior to the commencement of the Regulation 1/1970 – If the said transactions are illegal in view of any other provisions of law, it is for the appropriate Forum to take action but they cannot be declared void by Deputy Collector acting under Section 3 of Regulation 1/1970.

*(K.Mahalaxmi & another Vs. Government of Andhra Pradesh & others. 2000 (5) ALD 588).*

iv) Andhra Pradesh Scheduled Areas (Land Transfer) Regulation, 1959 – Section 3 – Extended to Telangana Area with effect from 1-12-1963 – Provisions of the Regulation do not apply to transfers made in Telangana area prior to 1-12-1963 – Authorities under Regulation while admitting the transfer to be prior to 1-12-1963 cannot set aside the same on the ground that it was by an unregistered sale deed and therefore not valid – There is no jurisdiction or power conferred on authority to question the validity of an alienation otherwise than being in contravention of the regulation – It is only a civil Court that can decide it.

*(Kola Mahalaxmi Vs. Agent to Government, Khammam & Others. 1999(6) ALD 718)*

**(iv) Fabricated documents-Transfers effected prior to the LTR-Validity:**

**AP (Scheduled Areas) Land Transfer Regulation, 1959 (Regulation 1 of 1959-Section 3(1)(b) and Constitution of India, Article 226** – Application filed by 3<sup>rd</sup> respondent for eviction of petitioner, her son and others who were in unlawful occupation of lands in question – Show-cause notice issued against which writ petition filed – Pending writ petition final order passed ordering eviction which is not challenged – Order passed in writ petition quashing show-cause notice which was rendered per incuriam in ignorance of inal order, cannot wipe out the final order passed – Unregistered sale deed of 1952 on which petitioner relies is a fabricated document – Revenue records tampered with – No

proof of the petitioner having come into possession of land pursuant to a transaction anterior to 1963 - The presumption under Clause (b) of Section 3(1) comes into full play and the petitioner will be liable for eviction. Therefore, the petitioner or Koleti Narayana must be deemed to have come into possession pursuant to a transaction that had taken place subsequent to the crucial date 1-12-1963.

*(Kanti Naramma Vs. Agent to Government, (District Collector), Khammam and others; (P.Venkatarama Reddi, J.); 1994(2) ALT 181 – 1994(1) APLJ 383)*

**(v) Authorities can enquiry in to transactions held in 1941:**

Section 3 and Agency Tracts Interest of Land Transfer Act, 1917, Section 4 – Authorities under the Regulation have jurisdiction to set aside an alienation to a non-tribal by a tribal in 1941.

*(I.Paramma Vs. Deputy Collector (TW) Elwinpeta & others, (Ramaswamy, J.); W.P.No.13298/96 Dt. 25-9-1986. (Unreported))*

**vi) Check to Suo motu power of officials:**

i) Andhra Pradesh Scheduled Areas (Land Transfer) Regulation, 1959 – Section 6 – Exercise of suo motu power – Should be made within a reasonable time.

Exercising a suo motu power after a lapse of reasonable time would be arbitrary and contrary to the principle of 'Rule of Law' enshrined in the Constitution and exercising such a suo motu power after 14 or 15 years would be ipso facto unreasonable. In the instant case, the sale deed is dated 11-3-1963 and it was upheld by the order of the Special Deputy Collector dated 24-5-1973 and as such the validity of such a sale deed cannot be considered on the basis of the report of the Deputy Tahsildar dated 6-4-1988, by exercising the suo motu powers. By the date, 25 years had elapsed. Even otherwise, from the earlier order dated 24-5-1973, the exercise of suo motu powers on the basis of the report of the Deputy Tahsildar dated 6-4-1988, would be after a period of 15 years. Therefore, the order of the first authority itself was after an unreasonable time and in view of the consistent law declared by this Court, the order



of the first authority are passed after an unreasonable time and, therefore, they are arbitrary and on this count they are liable to set aside.

*(Kola Mahalaxmi Vs. Agent to Government, Khammam & Others. 1999(6) ALD 718)*

ii) Sections 4 and 9 – Patta, grant of – Cancellation of, almost after a decade by Director of Settlement in exercise of suo motu power of revision under Section 4(3) of Regulation – Propriety – Held, while under Section 4, suo motu powers of revision are conferred on Director of Settlement, his powers are restricted to that of an appellate authority, pure and simple, under Section 9 of Regulation – Once proceedings relating to grant of patta in favour of petitioner were subject matter of appeal, before Director of Settlement, under Section 9(3), there did not exist any basis for him to exercise suo motu powers of revision under Section 4(3) – REVISIONAL POWER – Suo motu power of revision. *(Amaravadi Srinivasa Charyulu V. Commissioner of Survey Settlements and Land Records, Govt. of A.P., Hyderabad and others 2008 (3) ALD 155 = 2008 (4) ALT 169 )*

**vi) Governor can give retrospective effect to Regulations:**

(i) Competency of Governor:-Art.244 of Fifth Schedule of the Constitution-The Governor is empowered to make Regulations with retrospective effect. –It was held that the Governor could give retrospective effect to a Regulation made in exercise of the power conferred by Para 5(1) and (2) of the Fifth Schedule of the Constitution. Para (1) of Article 244 confers power on the Governor to apply an Act of Parliament or of the Legislature of a State to Scheduled Areas or part thereof subject to such exceptions and modifications with retrospective effect. Para (2) confers plenary power on the Governor of making independent legislation in respect of any matters falling under the three lists of 7th Schedule and such Regulations can also be given retrospective effect.

*(Venkat Vs. State of A.P. AIR 1967 SC71)*

(ii) Competency of Governor:

**AP (Andhra Area) Schedule Areas (Estates Abolition and Conversion into Rytowari Regulation, 1951: Preamble – Governor**

competent to make the Regulation bring into effect the retrospectivity of the Act, 26 of 1948 – Regulation valid.

**Held:** It is too late to contend that the power to make laws does not include the power to make laws prospectively as well as retrospectively. It may be that the Constitution-makers thought that so far as notifications are concerned, specific powers should be given to the Governor to issue notifications with retrospective effect. But, so far as law-making is concerned, it stands on a footing different from the issue of notifications. The Constitution-makers must be taken to be aware of the power of the Legislature to enact laws with retrospective operation. It is for that reason that it was not specifically stated that the Regulation could have retrospective effect. It follows that it was quite within the competence of a Governor to make the Regulation bringing into effect retrospectively the Madras Act xxvi of 1948.

*(H.Venkata Surya Parthasarathy Sastry Vs. State of AP (Chandra Reddy, CJ and Gopala Krishnan Nair, J.) 1963(2) ALT 106)*

iii) **Joint Collector is not a prescribed authority under LTR:** Civil Procedure Code 1908 – Order 6 Rules 2 and 4 – Pleadings – fraud – Plea of – Must be clearly elaborated – in absence of specific plea in notice/ pleadings, it becomes untenable for any authority/Court to record finding on this aspect – A person, who had benefited himself through acts of fraud, cannot be permitted to take any legal or factual plea, to perpetuate result of fraud – A.P. Scheduled Areas Land Transfer Regulation 1959, Section 3.

A.P. Scheduled Areas Land Transfer Regulation 1959 – Section 3 – Land transfer in Scheduled area – Proceedings initiated by special Deputy Collector (T.W) on basis of representation by one KB, original Pattadar – Later considering explanation by petitioner, authority took view that transfer having taken place much before notified date i.e. 1.12.1963, proceedings cannot be continued – Later Joint Collector/R2 initiated suo motu proceedings against father of petitioner under Section 166-B of Land Revenue Act – R2 not only set aside transfer in favour of petitioner's father but also directed resumption of land to successors of original tribal owner – Appeal under Section 158 of Act, dismissed by

R1 – Writ petition – Held, no complaint in show cause notice of violation of provisions of Act/Rules – KB's grievance, if at all, fitted into provisions of Regulation – Rs, not an authority under Regulation – Transfers, entered into revenue records, sought to be set at naught 30 years later – Though no limitation prescribed for exercise of suo motu powers, such exercise of power must be within reasonable time – R2 mistakenly recorded finding that entire proceedings vitiated by fraud, even though there is no act of fraud attributed to any party – Sweeping statement attributing fraud without any factual basis, unsustainable – Neither under Act nor under Rules, R2 conferred with power to restore possession of land to any one particularly when lands situate in scheduled area – Subject, matter when covered by specific legislation, R2 cannot assume powers which he does not possess under Act/Rules – Writ petition allowed – [A.P (T.A) Land Revenue Rules 1951, Rules 9(b) and 10] – A.P (T.A) Land Revenue Act 1951, Section 166-B.

A.P (T.A) Land Revenue Act 1951, Section 166-B – Suo motu powers – Conferment of, on authorities under enactment – Exception than rule – Powers being extraordinary in nature, strict compliance with relevant provisions insisted – Notice through which proceedings are initiated must be clear as to nature of powers to be exercised by authority viz., whether suo motu simpliciter, or on a representation by an aggrieved party – It must also mention factual basis and provision of law under which powers are invoked – Suo motu proceedings, inquisitorial in nature – Those at instance of aggrieved party, adversarial.

*(Tatikonda Sadashiv Vs. Special Commissioner, Land Revenue, A.P., Hyderabad and others, W.P No. 16107 of 1997, dated 15-2-2008 {(2008 (3) ALD 788))}*

**vii) Date of Notification of of STs is crucial to decide cases:**

AP Scheduled Area (Land Transfer) Regulation Act, 1917 (1 of 1917): Sections 2(c) and 4(1) Hill tribe – Nayaks are not members of the Schedule Tribes till the year 1950 – Transfer of land by a Nayak to non-tribal in 1935 – Not hit by Section 4(1).

Held: it is only in the year 1950 by the Constitution (Scheduled Tribes) Order, 1950 made under Clause (1) of Article 342 of the Constitution of India (as amended in 1956) it is declared that the Nayakas who reside in

the Agency Tracts shall be treated as members of the Scheduled Tribe. Till then the Nayak communities were neither members of the Scheduled tribe and, therefore, they were only non-tribals at the time of the transfer in the instant case, which took place on 16-10-1935. Therefore, it was a transfer by a non-tribal to another non-tribal and consequently it is not hit by Section 4(1) of the Transfer of Property Act of 1917.

*(V.Sanyasi and others Vs. State of AP & others (Jayachandra Reddy, J.) 1980(1) ALT 15 (NRC)=1980(1) APLJ 16((NRC))*

**ix) Subsequent amending Regulations of the years 1963 and 1970**

– Not retrospective – Valmikis are recognized as Scheduled Tribes in Andhra Pradesh only with effect from 25-9-1956 having regard to the Scheduled Castes and Scheduled Tribes (Amendment ) Order, 1956, ex-facie – Sale deeds executed by them prior to 25-9-1956 are valid.

*(Bayyapureddy Appala Naidu Vs. Agent to Government and Collector, Visakhapatnam and others, VVS. Rao, J. 2003 (5) ALD 279)*

**(x) 'ST' status matters in Tribal Land Disputes**–Prohibits sale of land by a tribal to a non-tribal. At the time of sale in 1951, the Nayaka caste, to which the Petitioner's Vendor belongs, was not notified as a Scheduled Tribe. Said caste was included as a Scheduled Tribe only under the Scheduled Caste and Scheduled Tribe Modification order of 1956. Said order has no retrospective effect. Hence transfer not void – Sale upheld. Respondents to grant Patta in favour of Petitioner.

*(Ambati obi reddy Vs. The Commissioner of Survey, Settlement & Land Records, Hyderabad and others; 1996 (2) An. W.R.516)*

**ix) No Limitation to file LTR Petition:**

Section 3(4) (Ins. by Regulation 1 of 1970) – Retrospective operation – Scope – Fiction created by sub-section (4) of S.3 introduced by Regulation.1 of 1970 – Only 'for the purposes of this section' i.e. to the amended S.3 inserted by Regulation,1 of 1970 – So it cannot be said to have retrospective operation and apply to situation prior to 3-2-1970 when Regln.1 of 1959 was amended by Regln.1 of 1970.

Section 7 – Provisions of Limitation Act – Applicability of-, to applications filed under S.3 of Regulation, scope – Only in respect of appeals filed

under S.3(3)(a) of Regulation, S.7 thereof made applicable provisions of Limitation Act – Law of limitation did not apply for applications made to primary authority under Regulation for eviction of non-tribals – No period of limitation prescribed for applications, since tribals cannot be trusted to safeguard their own rights like other citizens and had to be protected – Limitation Act 1908, Article 181; Limitation Act 1963, Article 137)

*(G. Varalakshmi Vs. Secretary to Government, Social Welfare (LTR) Dept., Hyderabad and others, (MS. Ramachandra Rao, J.), 2013(5) ALD 518)*

**(x): Pendency of proceedings before Settlement Courts does not preclude Authorities under LTR to decide the validity of Transfer of land:**

AP (Scheduled Areas) Land Transfer Regulation, 1959 (Regulation 1 of 1959-Section 3 and AP (Scheduled Areas) Ryotwari Settlement Regulation II of 1970, Section 7(1) Proviso (b) and 15 and AP (Scheduled Areas) Estates Abolition and Conversion into Ryotwari (Amendment) Regulation, 1951 and 1960, Section 9 – Grant of ryotwari Patta under Section 9 of the Abolition Regulation, 1951 – Pendency of proceedings under the Abolition Regulation will not preclude the authorities under the Land Transfer Regulation to decide the validity of a transfer.

**Held:** Though the Ryotwari Settlement Regulation 2 of 1970 is comprehensive in nature, expressly there is no prohibition created by the legislative enactment therein, inhibiting the authorities under the Land Transfer Regulation to conduct the enquiry under Section 3 whether there transfer between any person either between the tribal and non-tribal or between non-tribal inter se is valid or not. The legislative mandate is that the transfer shall be null and void if it is effected to any person other than Scheduled Tribe or a Co-operative Society consisting solely of scheduled tribes, of the land situated in the Agency Tract. Therefore the determination of the question whether any transfer in respect of immovable property situated in the Agency tracts is null and void when effected between a tribal and non-tribal or between the non-tribal inter se, is within the exclusion of the authorities constituted under the Land Transfer Regulation. Mere pendency of the proceedings either before

the Settlement Officer or the Director of Settlements or the Board of Revenue, does not preclude the authorities from making the enquiry.

*(M. Gangiraju & others Vs. Deputy Tahsildar (TW) Rampachodavaram & another (Ramaswamy, J.) 1986(1) APLJ 417.)*

**(xi) Speaking Order is essential in Appeals or Revision, but certain exemption to the rule:**

AP (Scheduled Areas) Land Transfer Regulation, 1959 (Regulation 1 of 1959)-Section 3(1) and 6 – Order of Government in revision without giving any reasons affirming the orders of the lower authorities – Valid.

**Held:** The appellate or revisional authorities must dispose of the appeals or revisions under “speaking orders” and the High Court or the Supreme Court while scrutinizing the order should be in a position to know the reasons that prevailed with the appellate or the revisional authorities. No particular form or scale of the reasons can be prescribed and the extent and the nature of the reasons depend upon each case. The order should be speaking either in itself if its conclusion is different from the conclusion of the lower authority or it can even speak through the order of the lower authority if it is in affirmation of or concurrence with the order of the lower authority contains the reasons for the conclusions. What all is essential is that from the appellate or revisional order it should be clear that the authority passing the order applied its mind effectively and that the order is not passed in a mechanical or routine way.

In the instant case, the Special Deputy Collector, gave sufficient reasons for holding the alienation of the land in question in petitioner’s favour to be null and void. The appellate authority i.e., the Agent to the Government, also gave cogent reasons of his own in affirming the order of the Special Deputy Collector. When the Government said in the impugned revision order that they do not see any reason to interfere with the orders of the Special Deputy Collector and the Agent to the Government and that therefore the petitioner’s revision application is dismissed, the Government means that they were agreeing with the reasons and the conclusion of the two lower authorities. Though the impugned order of revision passed by the government by itself appears

to be “non-speaking order, it is in fact a “speaking order” in so far as it speaks, though not by itself, through the orders of the lower authorities. (*R. Gopaiah Vs. Government of Andhra Pradesh (Madhusudhan Rao, J.) 1978(1) An.WR 488*)

#### 17. Procedure for Implementation of Order under LTR

i) **A.P. Scheduled Area Land Transfer Rules 1969** – Rule 7(4) – Eviction order – Execution of – A formal application for, needs to be filed – Case for recovery of possession filed by petitioner decreed naming Tahsildar as the officer to take steps for restoration of possession – it is for petitioner to take decree before Tahsildar and make a representation or application for executing the same – Petitioner cannot expect Tahsildar to take all steps without any application being made by her – Steps to be taken by Tahsildar since equated to a decree passed by a civil Court would disclose that a formal application needs to be filed and notices to concerned parties be issued – Petitioner having not made any such application, cannot complain of inaction on part of Tahsildar and insist that he must take necessary steps by himself to induct her into possession – Writ petition disposed of, leaving it open to petitioner to submit an application before Tahsildar/R2 with a prayer to execute decree passed in her favour – On such application being filed, R2 directed to take necessary steps, in accordance with law, duly issuing notices to affected parties.

(*Payam Ankamma Vs. Special Deputy Collector, Tribal Welfare, Bhadrachalam, Khammam District and others W.P No. 27038 of 2009, dated 29-12-2009. (2010 (2) ALD 171*)

iii) **Land restoration should be to original owner-Not to Government:** Section 3(2)(a) and (b) – Purchase of land in agency areas by a non-tribal is void – when the prescribed authority found the sale to be void, he has to restore the said land to the original owner except in cases where he is not willing to take it back or his whereabouts are not known – Prescribed officer cannot declare the land to have been vested in the State Government and initiate proposals for allotting the same to others except in the above circumstances

(*Gangavath Samya V Mandal Revenue Officer, Khammam and others 1999 (5) ALD 537*)

#### 18. AP Agency Rules 1924: Civil administration of Justice

The Scheduled Areas are governed by laws different from rest of the country for more than a century since Scheduled Areas and Tribes have customs as well as way of life different from the non-tribal society and they are vulnerable to exploitation by the outsiders. Several Acts and Regulations were passed from time to time so that the tribals are governed by separate laws based on safeguards to protect them from exploitation. Under Section 6 of the said Scheduled Districts Act 1874 the Governor was pleased to make the A.P. Agency Rules 1924 for the administration of the civil justice. These Agency Rules were extended to Telangana region with effect from 1-12-1963. Under the said rules it has been provided that the Collectors and District Magistrates of the districts shall be the Collectors and District Magistrates within the agency tracts under the designation of the Agent to the State Government.

Rule 1 of the A.P. Agency Rules 1924 makes it clear that for the trial and determination of the suits coming before them, the Agent to the State Government/District Collector, the Agency Divisional Officer/Sub-Collector/RDO and Agency Munsif/ Tehsildhar are vested with the same powers as are vested in the District and Revenue Courts in the ordinary tracts of the State of Andhra Pradesh.

The Provision of Rule 3 of the Agency Rules is exactly similar to that of Section 9 of CPC., By virtue of Rule 3 of the Agency Rules, the Agency Court has the jurisdiction to try all suits of civil nature, excepting suits of which their cognizance is either expressly or impliedly barred. The jurisdiction of Agency Court is not ousted either explicitly or impliedly by another Statute. The Agency Court is a substitute for a Civil Court in every respect in the Agency Areas. Agency Courts like Civil Courts have plenary powers to try all suits, which involve determination of any civil right.

Rule 5 provides that Agency Munsif shall have cognizance of the suits for movable or immovable property not exceeding in value of Rs. 500/. Rule 7 provides that suits of value exceeding Rs 5000/ shall be instituted in the court of the Agent to the State Government.

As per Rule 6 all other suits shall be instituted in the Court of the Agency Divisional Officer having Jurisdiction. The present courts are accessible

to the people even there is a Agency Munsif court at Mandal level. The provisions of Agency Rules 1924 provide reversionary power to exercise over the orders passed by the Agency Courts.

Rule 15 provides for the manner in which the trial of the Civil Suits shall be conducted. The procedure is summary in nature unlike elaborate procedure prescribed under Civil Procedure Code(CPC). Rule 16 provides that the rules prescribed by CPC for examination of witnesses in appealable cases shall apply to all trials of original suits and proceedings of civil nature held before the Agency Courts.

Rule 21 provides an authority to the Agent to Government to appoint by *Sanad* such number of pleaders in his own court or in any subordinate to him enabling them to do practice in Agency Courts. This provision facilitates local tribals to represent their case through these sanad pleaders, which is absent in the CPC. The decrees passed by the Agency Courts are easily executable as per the provision of Rule 31 of A.P. Agency rules.

There is no appeal against the interlocutory orders and appeals lie only against the originally decrees passed by the subordinate courts to the Agent Government under Rule 41. As such it limits the unnecessary litigation in the administration of civil justice. The procedure under Agency Rules is comprehensive, clear, simple and fair.

Rule 57 provides the Agent to the Government shall submit to the High Court in such form and on such dates as the High Court may direct statements of the business done by him, by the Agency Divisional Officers and by Agency Munsifs. Therefore the provisions of the Agency Rules which are governing the administration of civil justice are very clear and do not deprive the people to access justice. In fact the provisions of A.P. Agency Rules are much more simple than the provisions of the CPC which is applicable to other areas.

#### **19. Agency Courts have alone Jurisdiction in Agency Areas: Supreme Court**

The issue on the applicability of the Andhra Pradesh Civil Courts Act, 1972 [Act No. 19 of 1972] (for short, '1972 Act') to the Scheduled Areas

of the State of Andhra Pradesh fell to the consideration of Supreme Court of India in Civil Appeal Nos. 5030-5036 of 2004. I was the 2<sup>nd</sup> applicant in the impleadment petition in the said proceedings before the Supreme Court. The Supreme Court was pleased to hold that the Courts established under the AP Civil Court Act 1972 cannot be conferred any territorial jurisdiction over the Scheduled Areas in relation to cases where whole cause of action arose in the Scheduled Areas.

#### **Order:**

Before the High Court in a group of Civil Revision Petitions filed Section 115 of the Code of Civil Procedure, 1908 the issue under consideration was the applicability of the Andhra Pradesh Civil Courts Act, 1972 [Act No. 19 of 1972] (for short, '1972 Act') to the Scheduled Areas of the State of Andhra Pradesh. One of the contentions raised before the High Court was that the courts established under the 1972 Act cannot be conferred any territorial jurisdiction over the Scheduled Areas and the decrees passed by the Civil Courts were nullity in relation to cases where whole cause of action arose in the Scheduled Areas.

The High Court, by the impugned judgments dated June 27, 2000, August 2, 2000 and August 25, 2000, has declared the jurisdiction of the Civil Courts functioning in the Scheduled Areas from 1972 onwards as illegal and void. It was declared consequently that all the judgments, decrees and orders passed by the Civil Courts in the Scheduled Areas from 1972 onwards were null and void. The above judgments of the High Court are impugned in the Civil Appeals before the Supreme Court of India.

On January 23, 2008 the Supreme Court passed the following order :  
 "In the midst of hearing of these appeals, a peculiar problem has been brought to our notice by learned counsel appearing for the parties that under Andhra Pradesh Civil Courts Act, 1972 (hereinafter for short 'Act No.19 of 1972') a notification has been issued by the Governor in exercise of powers under sub-section (3) of Section 1 of the Act No.19 of 1972 by which the jurisdiction of the Civil Courts has come into force in the whole State of Andhra Pradesh except in the Scheduled Areas of the State.

It is contended by Mr. P.S. Narsimha, learned counsel appearing for the appellant(s) that even before coming into force of the Act, the Civil Courts had been established in the Scheduled Areas and they have been functioning since 1950. The appellant(s), decree-holders, obtained a decree from the Civil Court in the Scheduled Areas, however, since the operation of Act No.19 of 1972 is excluded from the Scheduled Areas of the State, they are unable to execute the decree. The High Court, in its impugned judgment, held that as the Act itself is not applicable in the Scheduled Areas, the decree passed by the Civil Court is null and void and inexecutable. It has been brought to our notice that now many non-Scheduled people are residing in the Scheduled Areas of the State including owners of commercial and business houses. That apart, many banks have been established including the appellant banks, who are non-Scheduled people and they are being deprived of resolution of the disputes through the Civil Courts. Even in those cases which have been decided by the Civil Courts, the decrees could not be executed because the Civil Courts Act is not applicable and the decree passed by the Civil Courts in Scheduled Areas has been declared null and void. These are the contentions over which we have given our serious consideration. A dispute may arise between the people of Scheduled Areas and non-Scheduled Areas in which case, in our view, the people of non-Scheduled Areas cannot be subjected to the methodology and the procedure adopted while resolving the dispute between the people of Scheduled Areas. In our view, therefore, a mechanism has to be evolved in a case where the dispute involved is between the people of Scheduled Areas and non-Scheduled areas. One way of resolving this problem is by either issuing a notification or by an amendment in the Act to the extent that the Civil Courts Act shall be extended to the Scheduled Areas of the State except where the dispute involved is between people Of Scheduled and non-Scheduled Areas. While saying this we also took note of the observation made by the High Court. The High Court, while allowing the petition, also took note the submission of the counsel for the appellant that it is necessary to confer the jurisdiction over the Scheduled Areas on the Civil Courts also. The High Court observed that it is for the State Government to take expeditious steps as early as possible to issue a

notification extending the provisions of Civil Courts Act even with retrospective effect in the Scheduled Areas for the peace and good government and for the speedy disposal of the civil cases in the Scheduled Areas. Copy of the High Court order was also directed to be endorsed to Home Department, Government of Andhra Pradesh. It is unfortunate that no steps appears to have been taken pursuant to such observation. In this view of the matter, we are now of the view that the matter requires serious consideration of the State Government at the earliest in terms of our suggestions as noted above. Mr. H.S. Gururaja Rao, learned senior counsel appearing for the State prays for three months' time for taking necessary steps in the matter and issuing appropriate notification in this regard. List these matters after three months.

Registry shall send a copy of this order to Registrar General of the Andhra Pradesh High Court who shall coordinate with the State Government for doing the needful."

Pursuant to the above order, the State Government started deliberating on the issues raised by this Court.

On November 1, 2011, when the matter came up before the Supreme Court, further time was prayed on behalf of the State of Andhra Pradesh for doing the needful, particularly issuance of Notification for resolution of the disputes as projected in the order dated January 23, 2008. The Supreme Court was not inclined to grant further time but wanted to ascertain the reasons for delay from the Principal Secretary, Law, Government of Andhra Pradesh. In the order dated November 1, 2011 this Court also recorded, CA Nos.5030-5036/2004 With connected matters *inter alia*, that an application seeking impleadment and for vacation/modification of the order dated January 23, 2008 has been made. The matter was kept for December 8, 2011 and the Principal Secretary, Law, State of Andhra Pradesh, was directed to remain present. Pursuant to order dated November 1, 2011, on December 8, 2011 Mr. A. Shankar Narayana, Secretary (Law), State of Andhra Pradesh was present. Mr. R. Venkataramani, learned senior counsel appearing for the State of Andhra Pradesh, informed the Court on that day that extensive meetings had taken place between him and the Secretary and they had tried to

work out modalities so that the order passed by this Court on January 23, 2008 could be implemented. Mr. R. Venkataramani, learned senior counsel, informed the Court that he had given three alternatives to the Government of Andhra Pradesh and the Government was being asked to appoint a High Power Committee headed by the Chief Minister of the State so that the procedure for implementation of the order dated January 23, 2008 could be worked out. This Court felt that some procedure had commenced and, accordingly, eight weeks time was granted to the State of Andhra Pradesh”.

The High Power Committee headed by the Chief Minister of the State and comprising of Minister for Tribal CA Nos.5030-5036/2004 With connected matters Welfare, Minister for Law, Chief Secretary to Government, Principal Secretary to Government Tribal Welfare, Principal Secretary to Government Social Welfare, Principal Secretary to Government Home, Secretary to Government Law & Justice, Secretary to Government Legal Affairs, Member of Legislative Assembly Rampachodavaram, Commissioner Tribal Welfare and Lawyer and President, Girijana Yuvajana SamkshemaSangam, R.C. Varam met on July 24, 2012 and, after extensive deliberations and having regard to the relevant facts and circumstances, decided to accept one of the alternatives suggested by Mr. R. Venkataramani, learned senior counsel, namely, retention of the existing system as obtaining in the Scheduled Areas in complete substitution of the Civil Courts Act.

Mr. R. Venkataramani, learned senior counsel for the State of Andhra Pradesh, submits that the decision taken by the High Power Committee is in accord and conformity with the notification issued on October 30, 1972 effective from November 1, 1972 declaring that the 1972 Act does not apply to the Scheduled Areas of the State. We have carefully considered the matter and we are satisfied that the judgments under challenge in this group of Civil Appeals do not require any interference. It is, however, clarified that those persons who have decrees, orders or judgments in their favour passed by CA Nos.5030-5036/2004 With connected matters the Civil Court(s) may lay their claim before the agency court(s). In the event of such claims being laid before the agency

court(s), the same shall be decided by the agency court(s) uninfluenced by any judgment, decree or order passed by the Civil Court(s). Civil Appeals are dismissed with no order as to costs.”

*(Civil Appellate Jurisdiction-Civil Appeal Nos 5030-5036 OF 2004, Nagarjuna Grameena Bank & others Vs. Medi Narayana and others Supreme Court order -Sep 25<sup>th</sup> 2012)*

#### 20. AP Agency Rules 1924

Rule 35 – Applicability – Scope – Attachment of salary of borrower living in agency area – R.35 does not get attracted – Borrower cannot question order of attachment on ground that civil Court has no jurisdiction to issue such order straight away without following R.35 – In dispute between two non-tribals, totally unrelated to immovable property situated within agency area, agency laws will not get attracted – [Civil Procedure Code 1908, Section 60]

Rule 35 of the Rules, which enjoins that the Court issuing the decree shall forward the decree and a copy of the judgment in the suit to the agent to the State Government for execution, applies only to cases where the execution is in relation to attachment of immovable property situated within the agency tracts. The obvious intention behind making such stipulation is to ensure that no immovable property situated within the agency tracts is attached or sold without the same being brought to the notice of the agent. This is obviously with a view to protect the interests of the tribals, who may directly or indirectly be connected with the agency tracts. In the instant case, the subject matter of attachment is the salary of the petitioner, who is a non-tribal. The direction is given to the petitioner’s employer, who is the Depot Manager, of APSRTC. The attachment does not in any manner relate to the agency tracts. Merely by reason of the borrower living in the agency area, Rule 35 does not get attracted. In the dispute between two non-tribals, totally unrelated to the immovable property situated within the agency area, the agency laws will not get attracted.

*(Pilli Rambabu Vs. Sirasani Srikanth Vinay Kumar, (C.V.Nagaraju Reddy, J.), 2012(3) ALD 580 = 2012(4) ALT 398)*

Rule 35 – Execution of decree and orders – Arbitration award – Petition for execution of-. Within agency tracts, filed before Sub-Divisional Magistrate (Mobile Court) – Not maintainable – Award to be forwarded to Agent to State Government for execution – CRP allowed – Impugned order passed in Execution Petition in Arbitration Case, set aside with liberty to Award Holder to proceed against petitioner/Jdr-1 before appropriate Forum.

*(Puligujju Vasantha Rao Vs. Shriram City Union Finance Limited, Bhadrachalam and another, (V.Eswaraiah and NRL Nageswara Rao, JJ.) 2013(3) ALD 136 = 2013 (2) ALT 263(DB))*

**Rule 42 – Receiver** – Order for appointment of -, to get produce deposited, passed by Agent to Government in a suit for cancellation of sale deed – Neither a finding recorded about facts and circumstances justifying appointment of Receiver nor any reasons for such appointment recorded – Even defendant in suit not heard before passing said order – Procedure followed by Agent to Government, held, patently erroneous and unsustainable – Provision under R.42 is akin to O.40 R.1 of CPC – Expression “where it appears to Court to be just and convenient”, in O.40 R.1, imposes an obligation on Court to record its satisfaction that appointment of a Receiver is just and convenient – such satisfaction should be supported by proper and convincing reasons – Impugned order set aside – CRP allowed – [Civil Procedure Code 1908, Order 40 Rule 1] *(Ajmeera Raghavulu Vs. Guguloth Rupla (Died) his LR and another, (C.V.Nagaraju Reddy, J.), 2012(3) ALD 584 = 2012(4) ALT 382)*

### III. Tribal Protective Land Laws

#### 1. The Agency Tracts Interest and Land Transfer Act, 1917 (Act No. 1 of 1917)

[14<sup>th</sup> August, 1917]

An Act to regulate, the rate of interest and the transfer of land in the Ganjam, Visakhapatnam and Godavari Agency Tracts.

**Preamble :** Whereas it is expedient to limit the rate of interest and to check transfers of land in the Agency tracts of Ganjam, Visakhapatnam, and Godavari Districts;

It is hereby enacted as follows:

##### 1. Short Title:

This Act may be called the Agency Tracts Interest and Land Transfer Act, 1917.

##### 2. Definition:

In this Act unless there is anything repugnant in the subject or context—

- a. “Agency tracts” means the scheduled districts as defined in Acts XIV and XV of 1847 and included within the districts of Ganjam, Visakhapatnam and Godavari.
- b. “Agent” means “Agent to the Governor” in the districts of Ganjam and Visakhapatnam and “Government Agent” in the district of Godavari.
- c. “Hill tribe” means any body or class of persons resident in the Agency tracts (not being a landholder as defined in [the Andhra Pradesh (Andhra Area) Estates Land Act, 1908 (Act 1 of 1908) that may from time to time be notified as such for the purposes of the Act by the [State Government].
- d. “Immovable Property” does not include standing timber, growing crops or grass.
- e. “Prescribed” means prescribed by rules made under this Act.
- f. “Transfer” means mortgage with or without possession, lease, gift, exchange or any other dealing with property not being a testamentary disposition and includes a charge or any contract relating to immovable property.



**3. Maximum interest that may be allowed as against a member of hill tribe:**

In any suit instituted after the commencement of this Act, notwithstanding any agreement to the contrary, —

- a. Interest on any debt or liability shall not as against a member of a hill tribe allowed or decreed at a higher rate than twenty-four per centum per annum nor shall any compound interest or any collateral advantage be allowed as against him;
- b. The total interest allowed or decreed on any debt or liability as against a member of a hill tribe shall not exceed the principle amount.

**4. Transfer of immovable property by a member of a hill tribe:**

- a. Notwithstanding any rule of law or enactment to the contrary, any transfer of immovable property situated within the Agency tracts by a member of a hill tribe shall be absolutely null and void unless made in favour of another member of a hill tribe, or with the previous consent in writing of the Agent or of any other prescribed officer.
- b. Where a transfer of property is made in contravention of sub-section(1), the Agent or any other prescribed officer may, on application by any one interested, decree Ejectment against any person in possession of the property claiming under the transfer and may restore it to the transferor or his heirs.
- c. Subject to such conditions as may be prescribed an appeal against a decree or order under sub-section(2) if made by the Agent shall lie to the State Government and if made by any other officer shall lie to the Assistant Agent or to the Agent as may be prescribed.

**5. Suits against a member of a hill tribe to be instituted in the Agency Courts:**

Notwithstanding the provisions of any law to the contrary, every suit against a member of a hill tribe instituted after the commencement of this Act shall be instituted only in the Courts of the Agency tracts.

**6. Attachment of immovable property:**

In execution of a money-decree against a member of a hill tribe, no immovable property owned by him within the Agency tracts shall be liable to be attached and sold except as and if prescribed.

**7. Farming of rules:**

- a. The State Government may from time to time make rules to carry out the purposes of the Act.
- b. All rules made under this section shall be published in the [Official Gazette] and, on such publication, shall have the same effects if enacted in this Act.

**8. Savings:**

- a. This Act shall not affect transfer made or debts or liabilities incurred before the coming into force of this Act.
- b. Nothing in this Act shall affect a landholder's right to proceed against the ryot in accordance with the provisions of the [Andhra Pradesh (Andhra Area) Estates Land Act, 1908 (Act 1 of 1908)] or the first charge declared by Section 5 of that Act, or the provisions of the said Act regarding relinquishment of a holding by a ryot.

**2. The Andhra Pradesh Scheduled Areas Land Transfer  
Regulation, 1959  
(Regulation No. 1 of 1959)**

[4<sup>th</sup> March, 1959]

A Regulation to regulate the transfers of land in the Scheduled Areas of the East Godavari, West Godavari, Visakhapatnam, Srikakulam [Adilabad, Warangal, Khammam and Mahaboobnagar] districts of Andhra Pradesh.

Be it enacted in the Tenth Year of the Republic of India as follows:

**1. Short title and commencement:**

- a) This Regulation may be called the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959.
- b) It shall come into force at once.

**2. Definitions:**

In this Regulation, unless the context otherwise requires:

- a) 'Agency tracts' means the Areas in the districts of East Godavari, West Godavari, Visakhapatnam, Srikakulam, [Adilabad, Warangal, Khammam and Mahaboobnagar] 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;
- b) "Agent" means the person designated by the State Government as an "Agent to the Government" in the districts of East Godavari, West Godavari, Visakhapatnam, Srikakulam, Adilabad, Warangal, Khammam and Mahaboobnagar as the case may be;
- c) "Agency Divisional Officer" means the person designated by the State Government as "Agency Divisional Officer" for the purpose of this Regulation;
- d) 'Immovable property' includes standing crops, timber and trees, but does not include growing grass.
- e) 'Prescribed' means prescribed in rules made under this regulation.
- f) 'Scheduled Tribe' means any tribe or tribal community or part of or group within any tribe or tribal community and specified as such in relation to the State of Andhra Pradesh by Public notification by the President under clause(1) of Article 342 of the Constitution'.

Clause (f) is substituted as per the Andhra Pradesh Scheduled Areas Land Transfer (Amendment) Regulation, 1978\*.

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

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

- 1) a. Notwithstanding anything in any enactment, rule or law in force in the Agency tracts any transfer of immovable property situated in the Agency tracts by a person. Whether or not such person is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of person, who is a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964) which composed solely of members of the Scheduled Tribes.
- b. Until the contrary is proved, any immovable property situated in the Agency tracts and in the possession of a person who is not a member of Scheduled Tribe, shall be presumed to have been acquired by person or his predecessor in possession through a transfer or his predecessor in possession through a transfer made to him by a member of a Scheduled Tribe.
- c. Where a person intending to sell his land is not able to effect such sale, by reason of the fact that no member of a Scheduled Tribe is willing to purchase the land or is willing to purchase the land on the terms offered by such person, then such person may apply to the Agent, the Agency Divisional Officer or any other prescribed officer for the acquisition of such land by the State Government, and the Agent. Agency Divisional Officer or the prescribed officer, as the case may by order, take over such land on payment of compensation in accordance with the principles specified in Section 10 of the Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961 (Act X of 1961), and such land

- shall there up vest in the State government free from all encumbrances and shall be disposed of in favour of members of the Scheduled Tribes or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964) composed solely of members of the Scheduled Tribes or in such other manner and subject to such conditions as maybe prescribed];
- 2) a. Where a Transfer of immovable property is made in contravention of sub-section (1), the Agent, the Agency Divisional Officer or any other prescribed Officer may, on application by anyone interested, or on information given in writing by a public servant, or suo motu decree Ejectment against any person in possession of the property claiming under the transfer, after due notice to him in the manner prescribed and may restore it to the transfer or his heirs.
- b. If the Transferor or his heirs are not willing to take back the property or where their whereabouts are no known, the Agent, the Agency Divisional Officer or prescribed officer, as the case may be, may order the assignment or sale of the property to any other member of a Scheduled Tribe [or a society registered or deemed to be registered under any law relating to Co-operative Societies for the time being in force in the State] composed solely of members of the Scheduled Tribes, or otherwise dispose of it, as if it was a property at the disposal of State Government.
- 3) a. Subject to such conditions as may be prescribed, an appeal against any decree or order under sub-section (2), shall lie within such times as may be prescribed –
- i if the decree or order was passed by the Agent, to the State Government;
  - ii if the decree or order was passed by the Agency Divisional Officer, to the Agent; and
  - iii if the decree or order was passed by any other officer, to the Agency Divisional Officer or Agent, as may be prescribed.
- b. The appellate authority may entertain an appeal on sufficient cause being shown after the expiry of the time limit prescribed therefore.

- 4) For the purpose of this section, the expression 'transfer' includes a sale in execution of decree and also a transfer made by a member of a Scheduled Tribe in favour of any other member of a Scheduled Tribe benami for the benefit of a person who is not a member of a Scheduled Tribe; but does not include a partition or a devolution by succession.]

**3A. Special provision in respect of mortgages without possession:**

Notwithstanding anything contained in this Regulation or in any enactment, rule or law in force in the Agency Tracts,—

1. any person, whether or not such person is member of a Schedule Tribe, may, subject to the provisions of Clause (2) mortgage without possession, any immovable property situated in the Agency tracts, to any Co-operative Society including a land mortgage bank, or to any <sup>1</sup> [XXX] bank or other financial institution approved by the State Government;

**Explanation:**

For the purpose of this clause, ' a bank' means a banking company as defined in Clause(c) of Section 5 of Banking Regulation Act, 1949 and includes the State Bank of India constituted under the State Bank of India Act, 1955, a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959, a corresponding a new bank as specified in the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Agricultural Refinance and Development Corporation established under the Agricultural Refinance and development Corporation Act, 1963, a Regional Rural Bank established under the Regional rural Banks Act, 1976, and any other banking institution notified by the Central Government under Section 51 of the Banking Regulation Act, 1949;

- 2 In respect of every mortgage which was executed at any time either before or after the date of commencement of the Andhra Pradesh Scheduled Areas Land Transfer (Amendment) Regulation, 1971, in the event of the immovable property so mortgaged or any part thereof being brought to sale in default of payment of the mortgage money or the interest thereof or for any other purpose, the said property shall be sold

only to a member of a scheduled Tribe or society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1954 (Act 7 of 1954) which is composed solely of members of the Scheduled Tribes.

**Explanation:**

For the purpose of Section 3-B and this section a Cooperative Society having as its members all or any of the following, namely:

- a. the individual members of the Scheduled Tribes;
- b. one or more Co-operative societies which does not have among its members any person who is not a member of a Scheduled Tribe;
- c. the Government shall be deemed to be a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964) which is composed solely of members of the Scheduled Tribes.

**3 B. Restriction on registration of documents:**

Notwithstanding anything contained in the, Registration Act, 1908, no document relating to transfer of immovable property situated in the agency tracts shall be registered by any person situated in the agency tracts shall be registered by any registering officer appointed under the said Act, unless the person presenting the document furnished a declaration by the transferee in the prescribed form which shall be subject to verification in the prescribed manner that the transferee is a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 which is composed solely of members of the Scheduled Tribes'.

**4. Suits against a member of a Scheduled Tribe to be instituted in the Agency Courts:**

Notwithstanding anything contained in any enactment, rule or law in force in the Agency tracts, every suit against a member of a Scheduled Tribe instituted after the commencement of this Regulation shall be instituted only in the Court having jurisdiction over the Agency tracts.

**5. Attachment and sale of immovable property:**

No immovable property situated in the Agency tracts and owned by a member of a Scheduled Tribe shall be able to be attached and sold in

execution of a money decree against such member, except to the extent and the manner prescribed.

**6. Revision:**

The State Government may revise any decree of order passed by the Agent, the Agency Divisional Officer or any other prescribed officer under this Regulation;

Provided that this power shall be exercised only after due notice to the parties affected by the decree of order and after giving them a reasonable opportunity of being heard.

**6-A. Penalty:**

1. Any person who, on or after the commencement of the Andhra Pradesh Scheduled Areas Land Transfer (Amended) Regulation, 1978.

a. Acquires any immovable property in convention of the provisions of this Regulation; or

b. Continues in possession of such property after a decree for ejection is passed;

Shall on conviction be punished with rigorous imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees or with both.

2. When a Court imposes a sentence of fine or a sentence of which fine forms a part, the Court may, when passing a judgment, order any part of the fine recovered to be paid to the member of a Scheduled Tribe who is a transferor, as compensation.

**6-B. Offences under Regulations to be Cognizable:**

Notwithstanding anything in the Code of Criminal Procedure, 1898 all offences under this Regulation shall be cognizable.

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

The provisions of the Indian Limitation Act, 1908 (Central Act IX of 1908), shall, in so far as they are not inconsistent with the provisions of this Regulation or the rules made there under, apply to proceedings under this Regulation.

**8. Power to make rules:**

1. The State Government may, from time to time make rules to carryout the purposes of this Regulation.

2. All rules made under this section shall be published in the Andhra Pradesh Gazette and on such publication shall have the same effect as if enacted in this Regulation.

**9. Repeal:**

The Agency Tract Interest and Land Transfer Act, 1917 (Madras Act of 1 of 1917) is hereby repealed to the extent to which any of the provisions contained therein correspond or are repugnant, to any of the provisions contained in this Regulation.

**10. Savings:**

- 1 The provisions contained in this Regulation shall not affect:
  - a. any transfer made or sale effected in execution of a decree of before the commencement of the Agency Tracts Interest and Land Transfer Act, 1917(Madras Act 1 of 1917); or
  - b. any transfer made or sale effected in execution of a decree after the commencement of the said Act and before the commencement of this Regulation, if such transfer or sale was valid under the provisions of the said Act.
- 2 Nothing in this Regulation shall affect a land-holder's right to proceed against a ryot in accordance with the provisions of the Andhra Pradesh (Andhra area) Estates Land Act, 1908 (Act 1 of 1908) or the first charge declared by section 5 of the Act or the provisions of that Act regarding relinquishment of the holding by a ryot or the provisions of the Central Provincial Tenancy Act, 1898 (Central Act IX of 1898);

Provided that no relinquishment of a holding by a ryot who is a member of a Scheduled Tribe shall be valid unless the previous sanction of the State Government, or subject to the rules made in this behalf the previous consent in writing of the Agent or the prescribed Officer, has been obtained thereto.

**3. The Andhra Pradesh Scheduled Areas Land Transfer Rules, 1969**

[G.O.Ms.No. 763, Revenue, 11<sup>th</sup> August, 1969]

(As amended by (1) Memo No. 373 dated 22-9-970

(2) Memo No. 378 dated 3-7-1972 (3) Memo No.2370/F1/76-2 Social Welfare dated 3<sup>rd</sup> Dec. 1976)

In exercise of the powers conferred by sub-section (1) of Section 8 of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (Andhra Pradesh Regulation 1 of 1969), the Governor of Andhra Pradesh hereby makes the following rules, namely;

**RULES**

1. 1. These rules may be called the Andhra Pradesh Scheduled Areas Land Transfer Rules, 1969;
2. They shall come into force at once;
2. In these rules, unless the context otherwise requires;
  - a. 'Form' means a form appended to these rules;
  - b. 'Regulation' means the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (Andhra Pradesh Regulation 1 of 1959);
  - c. 'Section' means a section of the regulation.
3. 1 [—————]
2. In addition to the Agent and the Agency Divisional Officer, the Deputy Collector (Tribal Welfare) shall be competent to decree ejection and order the assignment or sale of the property under sub-section (2) of section 3.
3. In addition to the Agent, the Agency Divisional Officer shall be competent to give consent in writing under the proviso to sub-section (2) of Section 10.
4. [Omitted]
5. [Omitted]
6. [Omitted]
7.
  1. Where the agent, the Agency Divisional Officer, or the Officer referred to in sub-rule 3 receives an application from anyone interested, or information in writing by a public servant or has

otherwise reason to believe that a transfer of immovable property has been made in contravention of sub-section 3, he shall give notice to any person in possession of the property claiming under the transfer, to show cause within the period specified in the notice, not being less than fifteen days from the date of its service why he should not be ejected, and property restored to the transferor or his heirs.

2. The notice referred to in sub-rule (1) shall be in form 'E' and shall be served in the manner specified in rule 10.
3. As soon as may be after the expiry of the period specified in the notice referred to in sub-rule (1) the Agent, the Agency Divisional Officer or the Officer referred to in sub-rule (2) of rule 3, as the case may be, shall take into consideration, the representations, if any received in reply to the notice, and after conducting such enquiry, if any, as he considers necessary pass such orders as he deems fit.
4. Where the Agent or the Agency Divisional Officer or the Officer referred to in sub-rule (2) of Rule 3 has decided that a person in possession should be ejected under sub-section (2) of Section 3 he shall pass a decree and order in Form 'F' and such decree and order shall be executed by the officer specified therein in the manner in which any decree of ejection by a competent Civil Court is executed;
8. 1. An appeal against any decree or order passed under sub-rule (4) of Rule 7 by the officer referred to in sub-rule (2) of Rule 3 shall lie to the Agent.
2. Subject to the provisions of Clause (b) of sub-section (3) of Section 3, every appeal under the said sub-section shall be preferred within a period of two months from the date of the decree or order appealed against.
3. The appellate authority to whom an appeal has been preferred under sub-section(3) of Section 3 may hold or cause to be held such further enquiry, if any, as it may consider necessary and after giving the parties concerned a reasonable opportunity of being heard, may pass such orders as it thinks fit.

9. Every authority making an enquiry under these rules shall have the powers to summon the attendance of persons or the production of documents under the Andhra Pradesh Revenue Summonses Act, 1869.
10. The service of every notice, order or other communication under these rules shall be effected by delivering it or tendering it to the person concerned or in his absence to his agent or to any adult male member of the family or if none of the above courses is practicable, by affixing it on his last known place of residence or by sending it to the last known place of his residence under certificate of posting.
11. No party shall be entitled to be represented by a legal practitioner before any officer or authority in any proceedings under these rules without the previous permission in writing of the Agent [or the Agency Divisional Officer]
12. (1) The consent shall not be granted for sale of immovable property in execution of a money decree against any member of a Scheduled Tribe unless the Agent or the Agency Divisional Officer, as the case may be is satisfied—
  - a. that the member of the Scheduled Tribe will retain in his possession after such sale adequate land to support him and the members of his family[—————].
  - b. that the true value of the land does not exceed the amount realized at the sale; [and
  - c. that the immovable property shall be sold only to a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964, which is composed solely of members of the Scheduled Tribes.]
 (2) Subject to the provisions of sub-rule (i), attachment and sale of immovable property situate in the agency tracts and owned by a member of the Scheduled Tribe shall be in accordance with the Agency Rules.
13. The consent shall not be granted under the proviso to sub-section (2) of Section 10 of the Regulation for the relinquishment of a

holding by a ryot who is a member of the Scheduled Tribe under the Andhra Pradesh (Andhra Area) Estates Land Act, 1908 (Act 1 of 1908) unless the Agent or the Agency Divisional Officer is satisfied:

- a. that such relinquishment is being made and without duress;
  - b. that the relinquishment is being made in good faith and is not vitiated by fraud or collusion;
  - c. that, except where he intends to give up the profession of an agriculturist, the land retained in possession of the ryot after such relinquishment is adequate to support him and the members of his family, and
  - d. that the ryot is unable to sell the holding to any member of Scheduled Tribe or to any Co-operative Society composed solely of members of the Scheduled Tribe.
14. In addition to the Agent and the Agency Divisional Officer, the Deputy Collector, Tribal Welfare shall be competent to take over land on payment of compensation under clause (c) of sub-section (1) of section 3.
15. Every application under clause(c) of sub-section (1) of Section 3 for acquisition of land by the State Government shall be made in writing in Form 'G' to the Agent, the Agency Divisional Officer or the Officer referred to in Rule 14. as the case may be.
- 16.
- 1) On receipt of an application under rule 15, the Agent the Agency Divisional Officer or the Officer referred to in Rule 14 as the case may be, shall cause a notice to be published in Form 'H' requiring any person objecting to the proposed acquisition, to file his objections thereto before him within the period specified in the notice, not being less than 15 days from the date of publication thereof;
  2. The notice referred to sub-rule (1) shall be published.
    - a. by affix in the village Chavadi, or , if there is no village Chavadi, in some other prominent place in the village in which the land is situate;

- b. by beat of tom-tom in the village in which the land is situate;
  - c. by affixture on the notice board of the Taluk Office have jurisdiction over the village in which the land is situate; and
  - d. by affixture on the notice board of the Police Station having jurisdiction over the village in which the land is situate.
3. The Agent, the Agency Divisional Officer or the Officer referred to in Rule 14, as the case may be, shall, after the expiry of the period specified in the notice referred to in sub-rule(1) make an enquiry into the application after giving not less than 15 days notice thereof to;
- a. the person making the application;
  - b. every person who has filed an objection in pursuance of the notice referred to in sub-rule(1); and
  - c. any other person known or believed to be interested in the land proposed for acquisition
4. The notice referred to in sub-rule (3) shall be in Form '1' and shall be served on the person concerned in the manner specified in Rule 10.
5. If on the conclusion of such an enquiry the Agent, the Agency Divisional Officer or the Officer referred to in Rule 14, as the case may be, determines that the applicant is not the rightful owner of the land or is otherwise into competent to alienate it, he shall make an order in writing rejecting the application;
6. If, on the conclusion of such as enquiry, the Agent, the Agency Divisional Officer or the officer referred to in Rule 14, as the case may be, determines that the applicant is the of rightful owner of the land and is competent to alienate it, he shall proceed to determine the compensation payable for the land in accordance with the principles specified in Section 10 of the Andhra Pradesh Ceilings on Agricultural Holdings Act, 1961 and the rules made there under.

#### Explanation 1:

The powers exercisable by the Revenue Divisional Officer under section 10 of the Andhra Pradesh Ceilings on Agricultural

Holdings Act, 1961 and the rules made there under shall be exercisable by the Agent, the Agency Divisional Officer referred to in rule 14 as the case may be.

**Explanation 2:**

The local area referred to in paragraph 2 of the Second Schedule to the Andhra Pradesh Ceilings on Agricultural Holdings Act, 1961 shall be the Revenue Division in which the land is situate;

7. On the determination of the amount of compensation under sub rule (6), the Agent, the Agency Divisional Officer or the Officer referred to in Rule 14, as the case may be shall take over the land on payment of such compensation and issue a certificate to the owner in Form 'J'.
17. 1. Any land taken over under rule 16 may be disposed of by assignment to a member of a Scheduled Tribe or to a Society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 composed solely of members of the Scheduled Tribes subject to the following conditions namely:
    - i that the assignee shall not, without the previous permission in writing of the Agent or the Agency Divisional Officer, sell the land for a period of ten years from the date of assignment;
    - ii that the assignee shall pay to the Government, the cost of acquisition of land in such [number] of equal annual installments not exceeding eight, as may be fixed by the Agent, the Agency Divisional Officer, or the Officer referred to in Rule 14, as case may be ; and
    - iii such other conditions as are normally applicable to the assignment of Government land from time to time.
  2. The maximum extent of land that may be assigned under this rule shall:
    - a. in the case of an (individual, be that extent of land which together with the lands, if any, held by him totals to five acres of wet or ten acres or dry; and

- b. in the case of a society, that extent of land which together with the lands, be if any, held by the members of the society totals to five acres of wet or ten acres of dry, per member of the society.
3. No land shall be assigned under this rule to any member or a Scheduled Tribe who already holds land of an extent of five acres or more of wet or ten acres or more of dry or to any society and of whose members holds land of five acres or more of wet or ten acres or more of dry land.

**Explanation:**

For the purpose of this rule, one acre of wet land shall be deemed to be equal to two acres of dry land.

4. Where the conditions of assignment have been violated by the Agent, the Agency Divisional Officer or the Officer referred to in Rule 14 shall be competent to resume the land without payment of compensation 1908.
18. (1) A document relating to transfer of immovable property situated in the Agency Tracts required to be registered under Section 3-B by any registering officer appointed under the Registration Act 1908 shall be presented before such officer along with a declaration in Form 'K' in triplicate as attested and verified by the Agent concerned.
    - (2)(a) Before presenting any document for registration as aforesaid, the transferee shall submit the declaration in Form-K duly filed and signed by him to the Agent for verification and attestation.
    - (b) On receipt of any such declaration in Form-K for verification and attestation, the agent concerned shall within thirty days cause an enquiry to be made by the Agency Munsif
      - (i) Whether the transferee is a member of a Scheduled Tribe or a society registered or deemed to be registered under the AP. Cooperative Society Act ,1964, which is composed solely of members of the Scheduled Tribe, and;
      - (ii) Whether the transfer is in contravention of sub section (1) of Section 3 of the Regulation and on receipt of the verification



report from the Agency Munsif return the declaration in Form-K to the transferee as per the said verification report.

- 19(1)a) The procedure prescribed for trial of summons cases under Chapter XX of the Code of Criminal Procedure 1898 shall be followed for the trial of cases under Section 6-A
- (2) The Courts constituted under the Criminal Procedure Code 1898 of having jurisdiction over the area concerned shall have jurisdiction to try cases under Section 6-A
- (b) in the case of a society, that extent of land which together with the lands, if any held by the member of the Society, totals to five acres of wet or ten acres of dry per member of the Society.
- (3) No land shall be assigned under this rule to any member of a Scheduled Tribe who already holds lands of any extent of five acres or more of wet or ten acres of more of dry or to any Society any of whose members holds lands of five acres or more of wet or ten acres or more of dry land.

**Explanation:** For the purpose of this rule, one acre of wet land shall be deemed to be equal twp acres of dry land.

- (4) Where the conditions of assignment have been violated the Agent, the Agency Divisional Officer, or the officer referred to in Rule 14 shall be competent to resume the land without payment of compensation.

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#### 4. Tribal Areas Regulation, 1359 Fasli (Published on 13<sup>th</sup> Aug 1949)

This Regulation was made to provide for better administration of the tribal areas of Hyderabad State. However this Regulation was subsequently repealed by the AP Scheduled Area Laws (Extension and Amendment) Regulation 1963.

##### **Power to Exclude or Modify application of Laws**

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 official Gazette, 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.

##### **Power to Make Rules**

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 under Section 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. Under Section 5, any Rule made under Section 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.

Under Section 6: No order passed under these Regulations shall be called in question in any court.

## 5. Notified Tribal Area Rules (Notified on 16-11-1949)

### Part I : General Provisions:

Under Rule 3, The Agent was competent to define jurisdiction of any Asst. Agent and to transfer any case, civil or criminal from any Asst. Agent to himself.

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.

Rule 9: Stipulates that the time limit for appeal shall be 30 days. Rule 10: No legal practitioner shall be allowed to appear in any case before the Panchayat. Rule 11: No legal practitioner shall be allowed to appear in any case before the court of Agent or Asst. Agent except with the Agent's permission..Rule 12: The member in charge of the Social Service Department may permit any legal practitioner to appear in any case before him.

#### **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 there under 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 there under 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:**

Under Rule 42, 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.

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. The Regulations thus came into force, in its entirety, on 01.12.1949.

### 6. A.P. PESA Act 1998

The following Act of the Andhra Pradesh Legislative Assembly received the assent of the Governor on the 12<sup>th</sup> January, 1998 and the said assent is hereby first published on the 16<sup>th</sup> January, 1998 in the Andhra Pradesh Gazette for general information: -

#### Act No. 7 of 1998

#### An Act Further to Amend the Andhra Pradesh Panchayat Raj Act, 1994.

Whereas the provisions of Part IX of the Constitution of India relating to Panchayats are extended subject to such exceptions and modifications to the Scheduled Areas as referred to in clause (1) of Article 244 of the Constitution of India by the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (Central Act 40 of 1996) enacted by the Parliament as required under sub-clause (b) of clause 4 of article 243M of the Constitution of India;

And whereas the provisions of the Andhra Pradesh Panchayat Raj Act, 1994 have to be brought in tune with the provisions of the said Central Act 40 of 1996 in their application to such Scheduled Areas in the State; Be it enacted by the Legislative Assembly of the State of Andhra Pradesh in the Forty-eight Year of the Republic of India; as follows:-

1. (1) This Act may be called the Andhra Pradesh Panchayat Raj (Amendment) Act, 1998.  
(2) It shall come into force on such date as the Government may, by notification, appoint.
2. In the Andhra Pradesh Panchayat Raj Act, 1994 (hereinafter referred to as the Principal Act) in Section 1, after sub-section(2), the following sub-section shall be inserted, namely:-  
(a)“(2A) In their application to the Scheduled Areas in the State as referred to in clause (1) of article 244 of the Constitution of India, the remaining provisions of this Act shall apply subject to the provisions of Part VIA of this Act.”  
(b)In the marginal heading after the word “extent”, the word “application” shall be inserted.
3. After Part VI of the Principal Act, Insertion the following Part shall be inserted, of the new namely: -

### “Part Vi-A”

#### Special Provisions Relating to the Panchayats, Mandal Parishads and Zilla Parishads Located in the Scheduled Areas

242 A

- (1) The provisions of this Part shall apply to the Gram Panchayats, Mandal Parishads and Zilla Parishads constituted in the Scheduled Areas in the State.
- (2) The provisions of this Part shall prevail over anything inconsistent therewith elsewhere in this Act.

242 B

For the purposes of section 3, a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets thereof comprising a community or communities and managing their affairs in accordance with traditions and customs.

242 C

- (1) Every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and without detriment to any law for the time being in force, the customary mode of dispute resolution.
- (2) Every Gram Sabha Shall, -  
(i) approve plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Gram Panchayat, at the village level;  
(ii) be responsible for the identification of section of persons as beneficiaries under poverty alleviation and other programmes.
- (3) Every Gram Panchayat shall obtain from the Gram Sabha a certification of utilisation of funds by that Panchayat for the plans, programmes and projects referred to in sub-section (2).

242 D

The reservation of seats in the Scheduled Areas to every Gram Panchayat and Mandal Parishad shall be in proportion to the population of the

communities in that Gram Panchayat or the Mandal Parishad as the case may be;

Provided that the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats;

Provided further that all seats of Sarpanches of Gram Panchayats and Presidents of Mandal Parishads shall be reserved for the Scheduled Tribes.

#### 242 E

The Government may nominate persons belonging to such Scheduled Tribes who have no representation in Mandal Parishads;

Provided that such nomination shall not exceed one tenth of the total members to be elected in that Mandal Parishad.

#### 242 F

The Mandal Parishad shall be consulted before making the acquisition of land in the Scheduled Areas for development project and before resettling or rehabilitating persons evicted by such projects in the Scheduled Areas, the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State Level.

#### 242 G

Planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Gram Panchayats, Mandal Parishads or the Zilla Parishads, as the case may be, in such manner as may be prescribed.

#### 242 H

(1) The recommendations of the Gram Panchayat, made in such manner as may be prescribed, shall be taken into consideration prior to grant of prospecting license or mining lease, or minor minerals in the Scheduled Areas.

(2) The prior recommendation of the Gram Panchayat, made in such manner as may be prescribed, shall be taken into consideration for grant of concession for the exploitation of minor minerals by auction.

#### 242 I

(1) The Gram Panchayat or as the case may be, the Gram Sabha shall exercise such powers and perform such functions in such

manner and to such extent as may be prescribed in respect of the following matters, namely:-

- (a) enforcement of prohibition or regulation or restriction of the sale and consumption of any intoxicant;
  - (b) the ownership of minor forest produce;
  - (c) prevention of alienation of land in the Scheduled Areas and restoration of any unlawfully alienated land of a Scheduled Tribe;
  - (d) management of village markets by whatever name called; and
  - (e) exercising control over money lending to the Scheduled Tribe;
- (2) The Mandal Parishad shall exercise such powers and perform such functions in such manner and to such extent as may be prescribed, in respect of the following matters, namely: -
- (a) exercising control over institutions and functionaries in all social sectors; and
  - (b) control over local plans and resources for such plans including tribal sub-plans.

GBHAVANI PRASAD,  
Secretary to Government,  
Legislative Affairs & Justice,  
Law Department.

### 7. 'PESA' Rules With Reference To Tribal Land Alienation

Rule 8. Powers and functions of Gram Panchayats and Mandal Parishads  
(III) Prevention of alienation of lands in the scheduled areas and restoration of alienated lands of scheduled tribe

- (1) The Gram Sabha shall
  - (a) Prepare a list of landholders containing the details of extent of land held and names of the Pattadars along with enjoyers.
  - (b) Verify the veracity of social status claims of all the Pattadars as to whether Pattadar is a genuine scheduled tribe.
  - (c) Verify as to whether the lands are purchased in the name of a tribal woman and enjoyed by a non-tribal.
  - (d) Visit the field if desired and physically verify as to whether the lands are cultivated by the tribal or by the non-tribal taken on lease, mortgage, etc.; and
  - (e) Approve the list of beneficiaries for assignment of Government lands.
  - (f) In all cases mentioned at (a) – (e) above, if Grama Sabha, after thorough investigation is satisfied that certain occupations are in violation of the Andhra Pradesh Land Transfer Regulation, 1959 as amended from time to time, Grama Sabha shall pass a resolution mentioning the details of violation. Competent authority under the Andhra Pradesh Land Transfer Regulation 1959 as amended from time to time shall initiate consequential action.
- (2) If there are conflicting claims in respect of the possession of lands, the Gram Sabha shall convene a meeting and call for evidence in support of such claims from the concerned to pass appropriate resolutions and request to the competent authority under the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 to initiate consequential action.
- (3) The Gram Sabha shall also convene a meeting on receipt of any complaint on alienation of land in favour of a non-tribal or suomotu pass appropriate resolution and shall forward the same to the competent authority to take necessary action to restore the land to the scheduled tribe transferor.
- (4) Any person aggrieved by the resolution of Gram Sabha may within a period of sixty days from the date of resolution, file a petition to the

competent authority under the A.P. Scheduled Areas Land Transfer Regulation, 1959.

- (5) The competent authority under the A.P. Scheduled Areas Land Transfer Regulation, 1959 may either allow or reject or refer the petition to the Gram Sabha concerned for reconsideration.
- (6) After receipt of such reference, the Gram Sabha shall meet within a period of thirty days, hear the petition, pass resolution on that reference and forward the same to the competent authority under the A.P. Scheduled Areas Land Transfer Regulation, 1959.
- (7) The competent authority under the A.P. Scheduled Areas Land Transfer Regulation, 1959 shall consider the resolution of Gram Sabha and pass appropriate order, either accepting or rejecting the petition.
- (8) The competent authority under the A.P. Schedule Areas Land Transfer Regulation, 1959 shall invariably implead the Gram Sabha concerned for their considered opinion in every case of land alienation involved tribal and non-tribal. The Gram Sabha concerned shall be impleaded and the opinion of the Gram Sabha shall be duly examined.
- (9) The competent authority under the A.P. Scheduled Areas Land Transfer Regulation, 1959 shall furnish the copies of judgments to the Gram Sabhas concerned in every case.
- (10) While restoring possession of land to tribal, the competent authority shall obtain the signature of a member of Gram Sabha to that extent.

#### IV. Executive Directives

##### 1) Recommendations of Koneru Land Committee: Govt. circulars

V. Nagi Reddy, IAS.,  
AP Secretariat,  
Principal Secretary to Government(TW)  
Hyderabad, AP.Social Welfare Department

D.O.Lr.No.11456/TW.LTR-1/2006-1, (RC.9.5) Dt.19.5.2008

Dear Sir,

Sub:- Tribal Welfare Department – Land Committee constituted under the Chairmanship of Sri Koneru Ranga Rao, Minister of Municipal Administration – Recommendation – Implementation – Special Courts/ Judge for speedy disposal of LTR cases in Hon'ble High Court of AP – Regarding.

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I would like to inform you that the Land Committee constituted under the Chairmanship of Sri Koneru Ranga Rao, Minister for Municipal Administration had made certain recommendations on the implementation of Land Transfer Regulation, in the benefit of Tribals. One of the recommendations is as extracted below.

##### **Recommendation No.9.5**

##### **S.No. R.No. Recommendation of the Land Committee**

38 · 9.5 Special concerted action should be taken for disposal of cases in the Hon'ble High Court and other courts. Special GP/G.Ps. shall be appointed to handle all the cases pending in the Hon'ble High Court. The Govt. may request the Hon'ble High Court for creation of a Special Bench for the purpose, if necessary and also for issuing instructions to the District and other lower courts not to admit cases of scheduled V areas and not to issue stay orders on such cases.

##### **Decision of Government**

Necessary orders shall be issued by the Tribal Welfare Department, in consultation with Law Department.

The State Government while accepting the Report of the said Land Committee have decided to implement the above Recommendation No.9.5. I would mention here that the Govt. Pleader, for SW, High Court of AP has mentioned that 175 cases relating to LTR are pending in High Court of AP and has suggested that the High Court may be requested for constitution of a special bench or Judge to deal with LTR cases, through Advocate General. The Law Department has also opined the same.

I therefore request you to represent before the Hon'ble High Court of AP for constitution of a special Bench/Judge for speedy disposal of pending LTR cases.

Yours Sincerely,  
(V.NAGI REDDY)

**Government of Andhra Pradesh Social Welfare (LTR.1)  
Department**

**MEMO NO.3204/LTR.1/06**

**Dated 19-7-2008**

Sub: TWD – Land Committee constituted under the chairmanship of Sri Koneru Ranga Rao – Recommendation No.9.8 –Instructions – Issued.

- Ref: 1. G.O.Ms.No.1049, Revenue (Assn.POT) Dept. Dt.28-7-2007.  
2. G.O.Ms.No.1191, Revenue (Assn.POT) Dept. Dt.7-9-2007.

Government vide GO 2<sup>nd</sup> cited, has ordered for implementation of the recommendations of Sri Koneru Ranga Rao Committee. The Recommendation No.9.8 of the said Committee is as under:

**Recommendation No.9.8:**

‘Sada Bainamas’, the unregistered documents which date back to a crucial period when LTR had not come into effect, shall be made inadmissible in evidence for establishing the non-tribal’s right to patta.

2. While considering the Recommendation No.9.8, the Land Committee made the following observation:-

The Sada Bainamas are unregistered plain paper documents of leases taken by non-tribals from tribals. Booking LTR cases in respect of such land is being found difficult because tribals are honest and will not go back on their lease commitments. They even come forward to say that they are themselves cultivating the lands though in fact their non-tribal lessees are doing so.

The Sada Bainamas are mostly antedated to a date when they will not attract LTR. On this basis the non-tribals are claiming to be legitimate pattadars. Actually, in view of the presumption in LTR, the burden of proof lies on the non-tribal to prove the credibility of these Sada Bainamas. Mere admission by the tribal lessor need not be given credence by the officer assessing the evidence.

Such Bainamas are sometimes being produced on old stamp papers, since these are available for a price. In the case of any unregistered document the assessment of evidence by the judge (SDC or RDO) carries great weight.

3. ‘Sada Baines’ referred to in Recommendation No.9.8 are unregistered plain paper documents of leases taken by non-tribals from tribals.

4. According to Sec.35 of the Indian Stamp Act, 1899, no document/instrument chargeable with duty shall be admitted in evidence for any purpose by any person etc., unless such instrument is duly stamped. Therefore, as per this section a plain paper document i.e., a document, not affixed with required stamps under the Indian Stamps Act, which was entered in between non-tribals, tribals etc., in respect of transfer of immovable property in scheduled areas is not admissible as evidence under APSALTR, 1959 and amendments issued thereon from time to time.

5. Further according to Sec.49 of the Registration Act, 1908 no document required by section 17 or by any provision of the Transfer of property Act, 1882, to be registered, shall affect any immovable property comprised therein, or confer any power of adopt, or be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered. In the explanation under Sec.50 of the Registration Act, 1908, it is clarified that the ‘unregistered’ means not registered according to Act No.XVI of 1864 or the Indian Registration Act, 1866 and where the document is extended after the first day of July, 1871 not registered under the Indian Registration Act, 1871 or the Indian Registration Act, 1877 or the Registration Act, 1908. The documents which require registration compulsorily are given in Sec.17 of the Registration Act, 1908. The documents on the transfer of land in Scheduled Areas as per APSALTR, 1959 and amendments thereon from time to time, by means of transfer as defined in Sub-Section ‘g’ in Section 2 of the APSALTR are the documents required to be registered under the Registration Act, 1908.

6. In view of the above rule position in the Registration Act, 1908, the unregistered documents effecting transfer of land in Scheduled Areas, are not admissible as evidence in LTR cases.

7. All the District Collectors/Project Officer, ITDAs / Special Deputy Collector (TW) and Agency Divisional Officers are requested to take necessary action while considering the Sada Bainamas i.e., the unregistered documents keeping in view the above rule position in LTR Cases.

V.NAGI REDDY,  
Prl. Secretary to Government.



**Government of Andhra Pradesh Social Welfare (LTR.1)  
Department**

**MEMO NO.11456/TW.LTR.1/06**

**Dated 28-02-2008**

Sub: TWD – Land Committee constituted under the Chairmanship of Sri Koneru Ranga Rao – Recommendation No.9.9 – Instructions – Issued.  
Ref: 1. G.O.Ms.No.1049, Revenue (Assn.POT) Dept. Dt.28-7-2007.

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Government have constituted a Committee under the Chairmanship of Sri Koneru Ranga Rao, Minister for (MA&UD) to assess over all implementation of Land Distribution Programmes, to suggest measures for its effective implementation and suggest required changes, amendments and measures for removal of obstacles in the Implementation of land distribution programme as well as land related legislations. The said Land Committee submitted its recommendations. In the GO cited, Government have accepted certain Recommendations to implement one such Recommendations is:

**Recommendation No.9.9**

1. The Old pattas issued to the non-tribals prior to 1950 shall be examined in to and enquiries shall be made about their genuineness. It is to be verified whether prior permission of the Collector was obtained to make these pattas primarily valid.

2. The Land Committee while considering the matter in the above Recommendation No.9.9 have observed that '21062 acres of land out of a total of 76170 in Uttoor Mandal, Adilabad stands in the name of the three advanced communities of non-tribals under what is being characterized by them and the MRO's as "Old Pattas". The pattas of non-tribals need to be verified as almost 1/3<sup>rd</sup> of the entire village extent is held by the non-tribals, who are by no means prima facie locals of the area. In Yellandu Mandal of khammam, 12,000 acres of patta land is held in the name of the old pattas by non-tribals who have migrated to Hyderabad. There are many such cases in all the agency areas.

The old pattas have to be examined in to to and enquiries made about their genuineness, it is to be verified whether prior permission of the Collector was obtained to make these pattas primarily valid. The questions

whether there is any record of the present owner being any inheritor from the original patta holder, is there any record of mutation through the last two generations, are the successions reflected in the supplementary Sethwars, Khasra Pahanis and finally in ROR, if the present holder is not connected as inheritor to the original Pattadar by any evidence, how can the present holder claim succession and right to hold land in the tribal area as a pattadar are to be examined".

3. According to Sub-Section(1) of Section 4 of the Agency Tracts Interest and Land Transfer Act, 1917 (Act 1 of 1917) any transfer of immovable property situated within Agency tracts by a member of a hill tribe to other than to another member of a hill tribe is not valid. If such transfer of immovable property consent in hill tribe in favour of other than hill tribe is made with the previous consent in writing of the Agent & govt., then such transaction is valid. This Act 1 of 1917 was applicable to the Agency Tracts of "Ganjam, Vizianagaram and Godavari".

4. In Section 3(1)(a) of APSLTR, 1959 a provision similarly to that of sections 4(1) of the Agency Tracts Interests and Land Transfer Act, 1971 is made. The APSLTR 1959 is applicable to the Scheduled Areas of E.G., W.G., Visakhapatnam, Srikakulam, Adilabad, Warangal, Khammam and Mahabubnagar Districts. By the AP Scheduled Areas Laws (Extension and Amendment) Regulation, 1963 the Andhra Agency Rules and the APSLTR, 1959 are made applicable to the Scheduled Areas in the Whole of the State.

5. Thus Transfer of immovable properties in Scheduled Areas in the State is regulated as per the above Agency Rules, APSLTR, 1959 and APSA laws (Extension and Amendment) Regulation, 1963. According to Regulation 1/1970 Non-tribals are forbidden from alienating lands in favour of other non-tribals. If any transfer of land in the Scheduled Areas is effected violating the provisions of the above mentioned Acts, such land transfers are invalid. The Land Committee observed that old Pattas are claimed by large number of non-tribals prior to 1950 and all such pattas should be examined and enquired in toto about their genuineness and also as to whether prior permission of the Collector was obtained.

6. In the above circumstances, all the Spl. Dy. Collectors in TW. Dept., and all Agency Revenue Divisional Officers are hereby instructed to verify all the old pattas, obtained by the non-tribals in Scheduled Areas about their genuineness i.e., whether old pattas are issued if so did they have prior permission of the District Collector. If any violence of provisions in Agency Rules and APSLTR is found on verification, such land transfers shall be cancelled forth with, after due procedure and the land be restored to Tribals.

7. All District Collectors and all Pos, ITDAs are requested to review the verification of old pattas, mentioned in para 6 above, and send compliance report to Government.

8. Receipt of this Memo should be acknowledged.

V.NAGI REDDY  
SECRETARY TO GOVERNMENT(TW)

### Government of Andhra Pradesh Abstract

#### Sri Koneru Ranga Rao Land Committee – Recommendation No.9.10 – Implementation- Orders – Issued.

Revenue (Services. I/1)Department

G.O.Rt.No.1001

Dated 02-05-2008

Read the following:-

- (1) GOMs.No.1049, Revenue (Assign. POT) Department, Dated 28-07-2007.
- (2) GOMs.No.96, Revenue (Ser.I/1) Department, Dated 30-01-2007.

#### **ORDER:-**

Regarding Deletion of powers of Director of Survey Settlements to Project Officer of ITDAs, Sri Koneru Ranga Rao Land Committee recommended as follows: -

#### **Recommendation No.9.10.**

1. "The Projects Officers, ITDA who are Additional Agents to the Government shall be given the powers of Director of Survey Settlement under Regulation 1/69, 2/69, 2/70 and 1/89. The powers conferred on Additional Agents to Government to appellate authorities under LTR shall be retrospective effect under LTR".
2. With regard to the said delegation of powers of Director of Survey settlements to Project Officers of ITDAs at batch of WPs were filed and they were dismissed by the Division Bench of the Hon'ble High Court in its Common Order dated 9-8-2007.
3. In view of the dismissal of the batch of WPs Government decided to implement the aforesaid recommendation of Sri Koneru Ranga Rao Land Committee and accordingly hereby order that the Project Officers ITDA who are Additional Agents to the Government shall be delegated with the power of Director of Survey Settlement under Regulation 1/69, 2/69, 2/70 and 1/89. The powers conferred on Additional Agents to Government as appellate Authorities under LTR shall have retrospective effect under LTR.
4. The Special Chief Secretary & CCLA./Director of Survey Settlements and Land Records/ Social Welfare (TW) Department/ and the District Collectors shall take action accordingly.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

M.Samuel

Principal Secretary to Government

**Government Of Andhra Pradesh  
Social Welfare (TW.LTR) Department**

Memo.No.11456/TW.LTR.1/06

Dt. 07-03-2008

Sub: -TWD – Land Committee constituted under the Chairmanship of Sri Koneru Ranga Rao – Recommendation No.9.11 regarding study of LTR cases in which orders were passed against in favour of Non-Tribals – Reg.

Ref: - 1.G.O.Ms.No.1049, Rev.(Assgn.POT) Dept., dated 28-07-2007

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Government have constituted a Committee under the Chairmanship of Sri Koneru Ranga Rao, Minister for (MA & UD) to assess over all implementation of Land Distribution Programmes, to suggest measures for its effective implementation and suggest required changes, amendments and measures for removal of obstacles in the implementation of land distribution programme as well as land related legislations. The said Land Committee submitted its recommendations. In the GO cited, Government have accepted certain Recommendations to implement. One such Recommendation is

**Recommendation No.9.11**

“All those LTR cases in which orders were passed by the Special Deputy Collector/Agency Divisional Officer/Additional Agent/Agent to Govt., etc., In favour of non-tribals shall be scrutinized and appeals shall be preferred against such orders”.

The Land Committee while considering the above Recommendation No.9.11 have observed that though Protective Land Transfer Regulations prohibit transfer of land not only from tribal to a non-tribal, but also among non-tribals in the Scheduled Areas, yet thousands of acres of land has been illegally passed into the hands of non-tribals. The committee further observed that despite the progressive constitutional safe guards in force, great injustice has been done to the Tribals.

Government have accepted the above Recommendation No.9.11 of the Land Committee and decided that all the orders passed earlier in LTR

cases in favour of non-tribals should be studied and appeals should be filed in fit cases. Accordingly all District Collectors and All Pos, ITDAs are requested to study all LTR cases in which orders were passed in favour of non-tribal, as to whether such orders are in strict compliance to the following Agency Laws: -

- i. The Agency Tracts interests and Land Transfer Act, 1917 (Act of 1917)
- ii. APSALTR 1959 (AP Reg., 1 of 1959)
- iii. APSA Laws (Extension and Amendment) Regulation 1963; (AP Reg.II of 1963)
- iv. APSALT (Amendment) Regulation, 1970 (AP Reg.1 of 1970)
- v. APSALT (Amendment) Regulation, 1971 (AP Reg.1 of 1971) and
- vi. APSALT (Amendment )Regulation, 1978 (AP Reg.1 of 1978)

On such study, if it is found that the LTR cases were decided in favour of non-tribals deviating the provisions of the above said Acts, all such cases shall be treated as fit cases to file appeals and appeals should be filed before the Competent Authorities. This should be completed within a period of one year from the date of issue of these instructions.

Receipt of this Memo should be acknowledged.

V.NAGI REDDY  
SECRETARY TO GOVERNMENT (TW)

**Government of Andhra Pradesh  
Social Welfare (TW.LTR) Department**

Memo.No.11456/TW.LTR.1/06

Dt. 28-02-2008

Sub: -TWD – Land Committee constituted under the Chairmanship of Sri Koneru Ranga Rao – Recommendation No.9.12 regarding disposal of LTR cases by Special Deputy Collectors and Agency Divisional Officers – Instructions – Issued.

Ref: - 1.G.O.Ms.No.1049, Rev.(Assgn.POT) Dept., dated 28-07-2007

\*\*\*\*

Government have constituted a Committee under the Chairmanship of Sri Koneru Ranga Rao, Minister for (MA & UD) to assess over all implementation of Land Distribution Programmes, to suggest measures for its effective implementation and suggest required changes, amendments and measures for removal of obstacles in the implementation of land distribution programme as well as land related legislations. The said Land Committee submitted its recommendations. In the GO cited, Government have accepted certain Recommendations to implement. One such Recommendation is

**Recommendation No.9.12**

“The LTR cases pending with the Spl. Dy. Collector and Agency Divisional Officer shall be disposed of in a time bound manner”.

While considering the matter in Recommendation No.9.12 above, the Land Committee observed that several LTR Cases are pending with the Spl. Dy. Collector and the Agency Divisional Officer due to non-filling up of the vacancies in the Scheduled Areas; lack of adequate knowledge over the subject; and lack of will to attend the disposal of the cases.

In order to implement the above Recommendation No.9.12 of the Land Committees the following instructions are issued.

- i. The Spl. Dy. Collectors (TW) & Agency Divisional Officers are directed to dispose of the LTR cases in a time bound manner, so as to dispose of any single case within 6 months period after

its detection. Similarly the Appellate authority to dispose of all appeal cases within a period of two months from the filling of appeals. Such a rigor requires regular holding of courts and watching of business turn out during the court sessions.

- ii. Project Officers of all ITDAs and all the District Collectors are requested to review the work of Spl. Dy. Collector (TW) and Agency Divisional Officer in their Jurisdiction with specific reference to the timely disposal of the LTR cases and appraise their performance.
- iii. The Revenue (Ser.I) Dept., who are dealing with the transfers and postings of Dy. Collectors in AP State Civil Services (Executive Branch) are requested to fill up the vacancies of Dy. Collectors in TW Dept., whenever arises on top priority basis and the Spl. Dy. Collector(TW) once posted should not be shifted for at least two years.
- iv. The Chief Commissioner of Land Administration, Hyderabad is requested to give training to all Dy. Collector in all Land matters including in Agency Rules, at regular interval with Refreshers Courses so that they will acquire adequate knowledge to deal with the cases under LTR with specific reference to settlement Regulation in Agency Areas and dispose of the cases promptly in a time bound manner.

The receipt of this Memo should be acknowledged.

V.NAGI REDDY  
SECRETARY TO GOVERNMENT (TW)

**Government Of Andhra Pradesh  
Revenue (ASSN.I(1))Department**

Memo.No.14829/Assn.i(1)/08-1

Dt. 03-05-2008

Sub: - KKR Land Committee Recommendation No.9.13 –  
Assignment of cultivable land in an uninhabited/deserted  
villages – Instructions – Issued.

Ref: - 1. G.O.Ms.No. 1406, Rev.Dept., Dt.25-7-1958.

2. G.O.Ms.No. 1407, Rev.Dept., Dt.25-7-1958.

Sri Koneru Ranga Rao Land Committee in its report, among others in recommendation No.9.13 has recommended that “Cultivable land in an uninhabited/deserted village, only tribal can hold and cultivate such land. If non-tribal are holding or cultivating such land they should be dispossessed and tribal should be put in possession. If no one is cultivating the lands and the lands are cultivable then either individual tribal or their cooperatives should be assigned the land.

The recommendation No.9.13 has been examined and Government hereby direct that to assign all Government lands which are cultivable in uninhabited/deserted villages to scheduled Tribal people who are residing nearest to such village as per Assignment policy.

All District Collectors shall follow the above orders, scrupulously and furnish action taken reports to the Chief Commissioner of land Administration, AP Hyderabad.

The Special Commissioner, O/o the Chief Commissioner of Land Administration AP, Hyderabad shall monitor implementation of Government order and furnish compliance report to Government from time to time.

M.SAMUEL  
PRINCIPAL SECRETARY TO GOVERNMENT

**Office Of The Chief Commissioner Of Land Administration  
Andhra Pradesh- Hyderabad**

**CCLA's Ref.No.11/202/07, Dt.22.11.2007**

Sub: Recommendations of Koneru Ranga Rao Land Committee –  
Implementation of Recommendation No.9.15. Issued in  
GOMs.No.1049, Revenue (ASN.POT) Dept., Dt.28-7-2007 –  
Circular Instructions – Issued – Reg.,

Ref: GOMs.No.1049 REVENUE (ASN.POT) DEPARTMENT,  
DT.28-7-2007

The attention of the Collectors in the State is invited to the reference cited, wherein the Government has issued orders for implementation of the recommendation No.9.15 of Koneru Ranga Rao Land Committee. This recommendation is as follows:

R.No.	Recommendation of the land Committee	Decision of the Government
9.15	Restoration orders passed under LTR in favour of tribals should be implemented pro-actively by the Revenue machinery within a fixed time frame. The progress of restoration of lands shall be monitored by a High Level Empowered Committee	Necessary executive instructions shall be issued by the CCLA

The Land Committee observed that there are several cases where ejection of the non-tribals has been ordered, but possession is yet to be restored to the tribes. All such cases have to be traced out and restoration shall be done in order to achieve the objective of the LTR duly observing the provisions contained in the Section 3(2)(a). The restoration orders in most of the cases are pending for decades. The progress is negligible and tardy, to say the least, because of the resistance or apprehension of resistance from the non-tribals.

The Land Committee also observed that orders were issued for restoration of land in favour of tribals for more than 350 acres, in Mulugu Mandal of Warangal District, but the land could not be restored due to resistance from the non-tribal occupants since 1980. In Tadvai Mandal of Warangal

District, the restoration orders have not been implemented for some reasons or other.

In Gudur Mandal of Warangal District about 1300 acres covered by LTR orders have not been restored and the non-tribals continue to enjoy the land illegally and merrily. In Narsampet Mandal of Warangal District, it was stated that in Rajivpet village all the Koyas were dispossessed of their lands, wherein non tribals have come into possession. In Khanapur village 50 acres of land assigned to the tribals, but it was went into the hands of non-tribals. But no action against the non-tribals has been taken. In Kothaguda Mandal out of 101 LTR cases, land has been restored only in 70 cases and in the rest the non tribals are still continuing in possession. In Julurpad Mandal of Khammam District restoration were passed and land was taken over under LTR in as many as in 1326 cases, but in only in 320 cases orders were implemented leaving a balance of 1006 cases. In Tekulapalli Mandal out of 130 LTR cases covering 353 acres, restoration has been effected only in 34 cases covering 93 acres, action could not be taken by the authority in respect of remaining cases for some reason or other.

It is felt that the PO, ITDA may be asked to extend full support to the MRO for going ahead with restoration/assignment by taking effective measures for eviction of the non-tribal occupant, where there are no constraints.

Therefore, the Collector, Khammam and Warangal are requested to take immediate following action for implementation of the above recommendation and to submit weekly progress reports with figures and facts to this office. A time schedule shall be fixed of (90) days to clear above said pending cases.

1. Instructions shall be given to the Sub Collector/ RDO/Tahsildar to implement the restoration orders passed in favour of tribals and ejection orders passed in favour of non tribals in Scheduled Areas within 2 months in all pending cases, if there are no injunction orders.
2. File counters in the cases of LTR pending before various courts and expedite the disposal of cases.
3. Review and reconciliation shall be done to expedite this item of work by PO, ITDA fortnightly on a priority basis.

Sd/- K.Raghotham Rao,  
Chief Commissioner.

**Office of The Chief Commissioner of Land Administration  
Andhra Pradesh- Hyderabad**

**.CCLA's Ref.No.L1/282/07 dt. 22-11-2007**

Sub: Recommendations of Koneru Ranga Rao Land Committee –  
Implementation of recommendation No.9.15 Issued in  
G.O.Ms.No.1049, Revenue (ASN.POT) Dept., Dt.28-7-2007 –  
Circular Instructions – Issued – Reg.,

Ref: G.O.Ms.No.1049, Revenue (ASN.POT) Dept., Dt.28-7-2007

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The attention of the Collectors in the State is invited to the reference cited, wherein the Government have issued orders for implementation of the recommendation No.9.15 of Koneru Ranga Rao Land Committee. This recommendation is as follows:

<b>R.No.</b>	<b>Recommendation of the land Committee</b>	<b>Decision of the Government</b>
9.15	Restoration orders passed under LTR in favour of tribals should be implemented pro-actively by the Revenue machinery within a fixed time frame. The progress of restoration of lands shall be monitored by a High Level Empowered Committee	Necessary executive instructions shall be issued by the CCLA

The Land Committee observed that there are several cases where ejection of the non-tribals has been ordered, but possession is yet to be restored to the tribes. All such cases have to be traced out and restoration shall be done in order to achieve the objective of the LTR duly observing the provisions contained in the Section 3(2)(a). The restoration orders in most of the cases are pending for decades. The progress is negligible and tardy, to say the least, because of the resistance or apprehension of resistance from the non-tribals.

The Land Committee has also reiterated about long pending cases of restoration of land in favour of tribals in Warangal and Khammam District.

Keeping in view of this, Land Committee recommended for taking prompt action for implementation within a stipulated time.

Hence, all the Collectors in Agency District are requested to take following action for implementation of the above recommendation.

1. Instructions shall be given to the Sub Collector/ RDO/Tahsildar to implement the restoration orders passed in favour of tribals and ejection orders passed in favour of non tribals in Scheduled Areas within 2 months in all pending cases, if there are no injunction orders.
2. File counters in the cases of LTR pending before various courts and expedite the disposal of cases.
3. Review and reconciliation shall be done to expedite this item of work by PO, ITDA fortnightly on a priority basis.

Sd/- K.Raghotham Rao,  
Chief Commissioner.

**Office of The Chief Commissioner Of Land Administration  
Andhra Pradesh- Hyderabad**

**CCLA's Ref.No.L1/283/07 dt. 26-02-2008**

Sub: Recommendations of Koneru Ranga Rao Land Committee –  
Implementation of recommendation No.9.16 Issued in  
G.O.Ms.No.1049, Revenue (ASN.POT) Dept., Dt.28-7-2007 –  
Communication of GOs and order of Hon'ble High Court – Reg.,  
Ref: G.O.Ms.No.1049, Revenue (ASN.POT) Dept., Dt.28-7-2007

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The attention of the Collectors in the Scheduled Areas is invited to the reference cited, wherein the Government have issued orders for implementation of the recommendation No.9.16 of Koneru Ranga Rao Land Committee. This recommendation is as follows:

R.No.	Recommendation of the land Committee	Decision of the Government
9.16	The Judgments given by the Hon'ble High Court striking down all the Govt. orders protecting non-tribal Sivai Jamadars shall be implemented scrupulously, eviction of non tribal encroacher of Govt. land shall be carried out.	The CCLA shall take necessary steps to effect the recommendations.

The Land Committee observed that assignment of Government lands to non-tribals labeled as "eligible sivai jamadars" has taken place in all the Agency areas. These non-tribal assignees have been given pattas under a mistaken notion that assignment of Government Land by the Government is not a "transfer" under LTR.

The Land Committee also observed that the invalidated and wrongly used G.O.Ms.No.41, Revenue (B) Department, dated 12-10-1971 already struck down by the Hon'ble High Court in its judgement dated 5-12-1984 in WP No.1755/80 almost 30 years ago has to be scrapped. In G.O.Ms.No.971, Revenue (B) Department, dated 7-10-1969, the Government had originally prohibited assignment of Government land to non-tribals in Scheduled Areas, Subsequently, the Government in the

following G.Os have issued orders to the effect that the non-tribals in the Scheduled areas who come within the purview of the definition of landless poor in occupation of Government land up to an extent of 5 acres of wet land or 10 acres of dry land are eligible for assignment of Government lands in the Scheduled areas.

1. G.O.Ms.No.41, Revenue (B) Department, Dated 12-10-1971.
2. G.O.Ms.No.951, Employment and Social Welfare Department, Dated 4-12-1974.
3. G.O.Ms.No.129, Social Welfare Department, Dated 13-8-1979.

The Hon'ble High Court, in its judgement dated 5-12-1984 in WP No.1755/80 has quashed the orders issued in G.O.Ms.No.129. Social Welfare Department, dated 13-8-1979 as it cannot amend the Regulation 1 of 1959. In view of this judgment of the Hon'ble High Court, the Land Committee recommended for eviction of non tribal encroachers of Government land.

The Land Committee also pointed out that thousands of acres of Government lands are in occupation of the non-tribals. In Bhadrachalam Revenue Division of Khammam itself, it is stated that more than 25,000 acres of Government lands are in occupation of non-poor. No action is taken to evict them and assign the lands to the tribals.

Therefore, the copies of the orders dated 5-12-1984 in WP No. 1755/1980 of Hon'ble High court along with copy of GOMs.No.129, Social Welfare Department, dated 13-8-1979 and Government Memo No.1412/F1/80-18 Social Welfare Department, dated 7-2-1985 are hereby communicated to all the Collectors in the Scheduled Areas in the context of eviction on non-tribal encroachers of Government land. In view of the quashing of the aforesaid Government orders the said Government orders do not come in the way of eviction of non tribal encroachers of Government lands in tribal areas.

Sd/- K.Raghotham Rao,  
Chief Commissioner of Land Administration.

**Government of Andhra Pradesh  
Revenue (L.A) Department**

**Memo No.39938/LA(A2)/07-1**

**Dt. 28-2-2008**

- Sub: Land Acquisition – Payment of ex-gratia to the assignees of the Government lands resumed for projects – Clarification – Issued.
- Ref: 1. G.O.Ms. No. 1307, Revenue (Assign-II) Deptt.  
Dt.23-12-1993
2. G.O.Ms. No. 135, Irrgn & CAD (PW-R&R) Dept.  
Dt. 30-11-2004.
3. U.O.Note No.34929/LA(A2)/2004-6, Dt. 22-03-2005 of the Revenue(LA) Department.
4. From the CCLA, AP. Hyd., Lr.No.G1/920/2007,  
Dt.17-07-2007.

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In the GO cited orders were issued for payment of lump sum ex-gratia equivalent to the market value, to the assignees whose lands are resumed for the projects and other public purposes subject to the conditions mentioned therein. In the GO 2<sup>nd</sup> cited, orders were issued by the Government in Irrigation Department to the effect that ex-gratia to the assignees of the Government lands resumed for Irrigation Projects in the State be paid on par with the package deal payable to the pattadars/awardees of private lands acquired on consent award basis for the same project subject to the condition that the Government lands shall in the first instance be formally resumed as per rules and also subject to other conditions mentioned in the GO first cited.

In the Memo third cited it was informed that the AP High Court in its judgment dt.09-03-2004 in WA No. 170/2002 in WP No.5122/1991 and batch has held that the assignees are entitled to compensation in terms of land acquisition on par with full owners of the land and that Government had filed SLP against the above judgment of the High Court and the Supreme Court in its order dt.24-01-2005 in SLP No.670, 678 of 2005 granted interim stay as regards making of further payment of compensation. All the concerned were requested to keep in view the said SLP while dealing with the cases of acquisition of assigned lands.



In the reference 4<sup>th</sup> cited, the CCLA has requested to issue necessary clarification regarding payment of ex-gratia to the assignees of Government lands in view of the orders issued by the Revenue & Irrigation Departments.

Government after careful examination of the matter, hereby clarify that since the Hon'ble Supreme Court of India had stayed making of further payment of compensation, payment of ex-gratia/compensation would be in accordance with the existing orders issued prior to the date of judgment of the Hon'ble High Court in respect of resuming the assigned lands ie., GO.Ms.No.1307, Revenue (Assignment) Department Dt.23-12-1993. In case any Department has issued any specific order on the subject then the said order would apply to a project concerning that Department only.

The Chief Commissioner of Land Administration, Andhra Pradesh is therefore requested to issue necessary instructions to all the concerned accordingly.

M.SAMUEL

PRINCIPAL SECRETARY TO GOVERNMENT

**Office of The Chief Commissioner of Land Administration  
Andhra Pradesh- Hyderabad**

**CCLA's Ref.No.L1/287/07 dt. 03-03-2008**

Sub: Recommendations of Koneru Ranga Rao Land Committee –  
Implementation of recommendation No.9.23 Issued in  
G.O.Ms.No.1049, Revenue (ASN.POT) Dept., Dt.28-7-2007 –  
Circular Instructions – Issued – Reg.,

Ref: G.O.Ms.No.1049, Revenue (ASN.POT) Dept., Dt.28-7-2007

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The attention of the Collector, Warangal District is invited to the reference cited, wherein the Government have issued orders for implementation of the following recommendation No.9.23 of Konepu Ranga Rao Land Committee and requested to implement the recommendation expeditiously.

R.No.	Recommendation of the land Committee	Decision of the Government
9.23	LTR – Based Settlements shall be taken up in mandals fully or almost completely depleted off tribals like Govindraopet and Mulugu in Warangal district to weed out illegal occupation by non-tribals.	The CCLA shall take necessary steps to effect the recommendation.

It is informed that the Land Committee observed that due to influx of non-tribals into Govindaraopet and Mulugu Mandals, almost entire agricultural land, private and Government, is under occupation of settlers. Most of the tribals field the villages. In Govindaraopet, in almost all the villages, the land is under cultivation by non-tribals. 75% of the population is also non-tribals. Most of the non-tribals are "settlers" from costal districts. The major thrust of infiltration and "detrribalization" has been during the last 10 years. In Mulugu, at large extent of the land occupied by the non-tribal settlers is Government land. They are not evicted, but pattas have not been granted either to them or to tribals. There are 2000 acres of Land Ceilings surplus land of which 1200 odd acres are under occupation of non-tribals. The restoration orders have been issued under LTR for 350 acres. The orders are not being implemented since 1980

due to "non-tribal resistance". The presumption under Sec.3(1)(b) LTR is that the entire land belongs to the tribals until proved to the contrary. As such, it is felt that the interests of the tribals to be protected in these two mandals for securing the land rights, which are getting adversely effected due to influx of large number of non-tribal "settlers". It is also felt that there is a need for comprehensive study into the implementation of land Laws in these Mandals followed up a decisive action programme to implement the LTR and other Land Laws scrupulously and expeditiously.

Therefore, the Collector, Warangal district is requested to form Special teams for conducting preliminary verification of above irregularities in violation of provisions of LTRs in Scheduled Areas in the above two mandals and to take action programme to implement the LTR and other Land Laws scrupulously and expeditiously.

Sd/- P.RAMAKANTH REDDY,  
Chief Commissioner of Land Administration  
and Special Chief Secretary.

**Office of The Chief Commissioner of Land Administration  
Andhra Pradesh- Hyderabad**

**CCLA's Ref.No.L1/288/07 dt. 22-10-2007**

Sub: Recommendations of Koneru Ranga Rao Land Committee –  
Implementation of recommendation No.9.24 Issued in  
G.O.Ms.No.1049, Revenue (ASN.POT) Dept., Dt.28-7-2007 –  
Circular Instructions – Issued – Reg.,

Ref: G.O.Ms.No.1049, Revenue (ASN.POT) Dept., Dt.28-7-2007

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The attention of the Collector, Warangal District is invited to the reference cited, wherein the Government have issued orders for implementation of the following recommendation No.9.24 of Koneru Ranga Rao Land Committee. The recommendation of the land committee and the orders of the Government are as follows:

R.No.	Recommendation of the land Committee	Decision of the Government
9.24	The Billa number lands ("unnumbered but surveyed land") that continue to be under unauthorized occupation mostly of non-tribals in violation of LTR shall be taken over by the Government and shall be assigned to tribals	The CCLA shall take necessary steps to effect the recommendation.

All collectors in the state are requested to identify the unnumbered blocks of land {the Billa number lands} and to identify the occupants for conferring rights on them as per rules and statutes/regulations in vogue in order to implement the recommendation of the Land Committee.

Chief Commissioner of Land Administration and Special Chief Secretary.

// Attested //

Adl. Asst. Commissioner  
[Settlements]

**Office of The Chief Commissioner of Land Administration  
Andhra Pradesh- Hyderabad**

**CCLA's Ref.No.L1/288/07 dt. 22-10-2007**

Sub: Recommendations of Koneru Ranga Rao Land Committee –  
Implementation of recommendation No.9.24 Issued in  
G.O.Ms.No.1049, Revenue (ASN.POT) Dept., Dt.28-7-2007 –  
Circular Instructions – Issued – Reg.,  
Ref: G.O.Ms.No.1049, Revenue (ASN.POT) Dept., Dt.28-7-2007

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The attention of the Collector, Warangal District is invited to the reference cited, wherein the Government have issued orders for implementation of the following recommendation No.9.24 of Koneru Ranga Rao Land Committee. The recommendation of the land committee and the orders of the Government are as follows:

R.No.	Recommendation of the land Committee	Decision of the Government
9.24	The Billa number lands (“unnumbered but surveyed land”) that continue to be under unauthorized occupation mostly of non-tribals in violation of LTR shall be taken over by the Government and shall be assigned to tribals	The CCLA shall take necessary steps to effect the recommendation.

The Land Committee observed that in Kothaguda village there are 21000 acres of Billa Number lands. A Billa Number is that large part of a surveyed land that has been left without numbering for whatever reason mainly because at the time of survey, it was not cultivated though cultivable. In course of time these unnumbered surveyed lands got occupied by enterprising non-tribals who brought them under the plough or acquired them informally from the tribals who had started cultivating them. In 1993 the land was surveyed by Assistant Director, Polvancha. In 2002 Mandal Revenue Officer's office was blasted and the survey records were destroyed. Presently, Forest authorities are disputing the demarcation between Revenue and Forest land.

In Medapalli Village, the Billa No. is 536 acres. Of these, 50% Maktadar's portion admeasuring 180 acres was declared as surplus land under Land Ceiling Act. Out of these 90 are under submersion and another 90 under non-tribal occupation. The village has no tribal population.

Survey records should be available in Central Records Office, Hyderabad. If not, fresh survey is going to take time, the demarcation between Forest land and Revenue land should be done through joint inspection. The Collector, Khammam District is requested to take up the following action for implementation of the recommendation.

- i) Identify unnumbered blocks or Billa number lands.
- ii) Conducting enquiries with regard to the possession of these lands and socio & economic status of the present possessor.
- iii) Conducting of detailed survey and preparation of sketches and sub divisional statements duly verifying the disputes over the land.
- iv) Evicting the non tribals from the lands invoking the provision of LTR, in case non tribals are in possession of the land.
- v) Issuing patta to the eligible tribals as per rules.
- vi) Incorporating the necessary changes in the Revenue Records duly following the procedure in vogue.
- vii) Preparation of an action plan to complete the entire process within a period of 90 days for implementation of the recommendation.

Sd/- S.Bhale Rao,  
Special Commissioner.

**Government of Andhra Pradesh  
Endowments Department**

From: P.Sundara Kumar, IAS  
Commissioner,  
Endowments Department,  
AP, Hyderabad,

To: The Principal Secretary to Govt.,  
Revenue (Endowment) Department,  
Secretariat,  
AP, Hyderabad.

**Rc.No.M1/42004/2007 Dated:04-01-2008**

Sir,

Sub: Endowment Department – Endowment Land – Implementation of LTR Act for Endowment Lands as per recommendation No.9.25 of Koneru Ranga Rao Committee – Submission of report – Regarding.

Ref: Government Memo. No.64388/Endts.II/2007.

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Kind attention to the reference cited is invited wherein it was instructed to submit the report on implementation of LTR Act for Endowment Lands as per recommendation No.9.25 of Koneru Ranga Rao Committee. In this regard I submit that instructions were given to Executive Officer Sri Seetha Ramachandra Swamy Temple, Bhadrachalam to take steps for eviction of Non-tribal's from the Endowment Lands and to take possession of the lands immediately.

This is for favour of information.

Encl: Copy of the Instructions to Executive Officer.

Yours faithfully,  
(C.Raghupathi)  
Joint Commissioner (Estates)

**Office of The Chief Commissioner of Land Administration  
Andhra Pradesh- Hyderabad**

**Rc.No.M1/42004/2007 Dated:04-01-2008**

Sub: Endowment Department – Endowment Land – Implementation of LTR Act for Endowment Lands as per recommendation No.9.25 of Koneru Ranga Rao Committee – eviction of Non-tribal's from the Endowment Lands – Report called for – Regarding

Ref: Government Memo. No.64388/Endts.II/2007 dated 20-12-2007.

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The Executive Officer of Sri Seetha Ramachandra Swamy Devasthanam, Bhadrachalam is informed that in the reference cited, instructions were given to submit report on implementation of LTR Act for Endowment Lands as per recommendation No.9.25 of Sri Koneru Ranga Rao Committee. Hence the Executive Officer is requested to take steps of eviction of Non-tribals who are in illegal occupation of the temple land of Sri Seetha Ramachandra Swamy Devasthanam, Bhadrachalam in villages surrounding Bhadrachalam and to take possession of the lands and report.

(By Order of the Commissioner)

Sd/- C.Raghupathi  
Joint Commissioner (Estates)

**Office of The Chief Commissioner of Land Administration  
Andhra Pradesh- Hyderabad**

**CCLA's Ref.No.L1/289/07 dt. 13-10-2007**

Sub: Recommendations of Koneru Ranga Rao Land Committee –  
Implementation of recommendation No.9.26 accepted for  
implementation in G.O.Ms.No.1049, Revenue (ASN.POT)  
Dept., Dt.28-7-2007 – Issue of executive instruction for  
implementation of the recommendation – Request – Reg.,  
Ref: G.O.Ms.No.1049, Revenue (ASN.POT) Dept., Dt.28-7-2007

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The attention of the Collector, Warangal and Khammam District is invited to the reference cited, wherein the Government have issued orders for implementation of the following recommendation No.9.26 of Koneru Ranga Rao Land Committee and requested to implement the recommendation expeditiously.

<b>R.No. Recommendation of the land Committee</b>	<b>Decision of the Government</b>
9.26 The lands of farari pattadars (Jung Sipahi lands in Ajaib Singh Lands etc) shall be assigned to the tribals)	The CCLA shall take necessary steps to effect the recommendation. If any amendment is needed, the CCLA shall send necessary proposal to Govt. in Rev & Tribal Welfare Depts.

The Land Committee observed that Jung Sipahi Patta were granted by the Nizam to some of the military personnel of Nizam's army. The lands have been under cultivation by the tribals for the last 60 years or more. But, the Revenue records continue to show the names of the then military personnel as pattadars whose identity and whereabouts are not known. These cases are prevalent in Eturnagaram Mandal of Warangal district. Similarly, in Kothaguda Mandal of the same district as much a 1000 acres of land stand in the name of one Ajalb Singh whose identity and whereabouts are not known. The land is however is cultivated by the

Koya tribals and some non-tribals. About 450 acres of the land in Payaram Mandal, Khammam District are said to be in the name of Jung Sipahis whose identity and whereabouts are not known and there are no successors claiming the land.

There are also cases of absconding pattadars also known as Farari Pattadars, which are covered by Section 43 of AP Telangana Land Revenue Act, 1317 F and Rule 9 of AP (Telangana Area) Land Revenue Rules, 1951. Under these provisions, Collector may notify these lands and take possession of the same. Section 43 of the said Act read with Rule 9 stipulates that in case of a registered holder of a holding, who has not been heard for more than 7 years in the absence of any evidence to show that he is still alive, he shall be presumed to have been dead and the registry transferred accordingly. Those lands, which are under cultivation by the tribals, may be assigned to them and the lands under occupation by non-tribals may be taken over under LTR.

Therefore the Collectors of Warangal and Khammam districts are requested to take following action for implementation of the above recommendation.

- i. Identify the land given to the jung sipahis and the lands of the farari pattadars.
- ii. Enquire about the whereabouts of the jung sipahis/farari pattadars and their legal heirs by giving notice and publishing the same as per rules in force.
- iii. If the whereabouts of the jung sipahis/farari pattadars not available, notify these lands and take possession of the same invoking Section 43 of AP Telangana Land Revenue Act, 1317 Fasil and Rule 9 of AP (Telangana Area), Land Revenue Rules, 1951.
- iv. Take action to evict the present occupiers, if they are non-tribals in the Scheduled Area.
- v. Issue pattas, if the present occupiers are eligible tribals as per LTR read with BHSO {I}.

Sd/- A.Raghotham Rao,  
Chief Commissioner of Land Administration.



suggestions and measures to be taken to solve land problems in the Schedule areas of the State and prevention of atrocities against Scheduled Tribes.

3. Dr. Justice K.Punnayya Commission has made 42 recommendations for removal of untouchability and protection to the weaker sections under Protection of Civil Rights and Prevention of Atrocities Acts. While studying the issue relating to atrocities against tribals, Justice K.Punnayya has felt that there are large number of disputes pending in various courts relating to the land in the Scheduled Areas of the State. In many such land issues the non-tribals are in occupation of the Scheduled Area lands by virtue of stay orders obtained from various courts and the poor tribals are not in a position to expedite the issues relating to vacation of stay or disposal of the cases through the government machinery. The Commission felt that Integrated Tribal Development Agencies should be given powers to utilize the services of the renowned and committed legal experts in specific cases for expediting the vacation of stay and disposal of cases pending at various courts including Andhra Pradesh High Court. Accordingly, the Commission has given the following recommendations.  
 "Powers to ITDAs to appoint Officers to expedite the cases of restoration of tribal lands which are pending at various levels"
4. The Cabinet in Resolution No.383(12)/2001, dated 1-10-2001 has approved the recommendation.
5. In the above circumstances, the Government hereby authorizes the Project Officers, Integrated Tribal Development Agencies to appoint officers/legal experts to expedite the vacation of stay and disposal of important cases relating to Scheduled Area lands pending in various courts in the State.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF  
ANDHRA PRADESH)

C.R.BISWAL  
SECRETARY TO GOVERNMENT

**Government of Andhra Pradesh**  
**Social Welfare (LTRI) Department**

Memo No.17242/LTR1/2001-1 Dated:2-11-2001

Sub: Tribal Welfare – Report of Dr. Justice K.Punnayya, Commission of Enquiry for Prevention of Atrocities on SCs and STs – Recommendations of the Commission – Implementation of Recommendation No.41 on total ban on alienation of tribal and in favour of non-tribals – Reg.

Ref: G.O.Ms.No.92 Social Welfare (POA.1) Dept., Dt.3-10-2001

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Dr. Justice K.Punnayya Commission of Enquiry which enquired into Eradication of un-touchability and prevention of atrocities on SC&STs has recommended among others (Recommendation No.41) that alienation of tribal lands to non-tribals should be totally banned. The Cabinet has approved the above recommendation.

Under Section 3(1)(a) of APSALTR 1959 read with amended Regulation 1/1970, any transfer of immovable property situated in Agency tracts by a person. Whether or not such person is a member of Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of a person who is a member of Scheduled Tribe or a society registered under the AP Coop., Societies Act, 1964, which is composed solely of members of scheduled tribes. In the above referred Regulation it is defined that "Transfer" means mortgage, lease, sale, gift, exchange or any other dealing with immovable property. Alienation of tribal lands to non-tribals in Agency Tracts will no doubt violate the provisions of APSALTR 1959 read with Regulation 1/1970.

All the Collectors of the Agency Districts are directed to implement the provisions of the APSALTR. 1959 scrupulously to comply with the recommendation of Dr. Justice K.Punnayya Commission.

C.R.BISWAL  
SECRETARY TO GOVERNMENT

To  
All the Collectors of Agency Districts  
Copy to :  
The PS to Chief Minister  
The PS to Spl. Secretary to Chief Minister  
The PS to Minister(TW)  
The PS to Secretary (SW) Secretary (TW)  
The Commr. Of Tribal Welfare AP., Hyderabad  
SF/SCs SW(POA) Dept.,

//FORWARDED BY ORDER//

Sd/-  
SECTION OFFICER

**Government of Andhra Pradesh**  
**Social Welfare (LTR) Department**

Memo No.17140/LTR1/2001-1 Dated:25-10-2001

Sub: Social Welfare Department – Report of Dr. Justice K.Punnayya, Commission of Enquiry for Eradication of Untouchability and Prevention of Atrocities on SCs and STs – Recommendations of the Commission – Issue of pattas conferring ownership rights to Tribals on Government lands which are found to be unobjectionable - Regarding.

Ref: 1. G.O.Ms.No.35 SW (POA.1) Dept., Dt.21-4-99  
2. G.O.Ms.No.92, SW (POA.1) Dept., Dt.3-10-2001

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1. In the GO first cited, the Government of Andhra Pradesh in exercise of powers conferred by Section 3 of the Commission of Enquiry Act 1952 (Central Act GO of 1952) have appointed Dr. Justice K.Punnayya, Retired Judge of Andhra Pradesh High Court Single Member Commission of Enquiry to inquire into the practice of untouchability and atrocities against SCs and STs and suggest measure for eradication of untouchability and prevention of atrocities.
2. The Commission after touring all the Districts in Andhra Pradesh and based on numerous petitions presented to it by the SCs and STs has presented its report in two parts viz Part-I Scheduled Castes containing suggestions and measures to be taken for eradication of untouchability and prevention of atrocities and Part-II Scheduled Tribes containing suggestions and measures to be taken to solve land problems in the Schedule areas of the State and prevention of atrocities against Scheduled Tribes.
3. Dr. Justice K.Punnayya Commission has made 12 recommendations. The Cabinet in its Resolution No.383(12)/2001, dated 1-10-2001 has approved the recommendations of



the Commission. The Government in the reference 22<sup>nd</sup> cited has decided to launch an action programme based on the recommendations of the Commission from 1<sup>st</sup> November, 2001.

4. In one or the recommendations, Dr. Justice K. Punnayya Commission has suggested that all Government lands in the Scheduled Areas, which are available for assignment may be assigned to the Tribals. The Commission has also felt that in spite of Government orders for assignment of the land in scheduled areas only for Scheduled Tribes, there are Government lands which have not yet been assigned to eligible tribals. The Recommendation No.18 is as follows:  
"Issue of Pattas conferring ownership rights to Tribals on Government lands which are found to be unobjectionable"
5. The Government in Revenue (Assignment) Department have already issued orders for assignment of surplus Government land and on issue of regular pattas to land less poor.
6. Government after careful examination of the Recommendation of the Dr. Justice K. Punnayya Commission which have been approved by the Cabinet, have decided that all the Agency Districts Collectors shall pay special attention on issue of pattas conferring ownership rights to the Tribals on all unobjectionable Government lands in Scheduled Areas.

C.R. BISWAL  
SECRETARY TO GOVERNMENT

### 3. Government of Andhra Pradesh Social Welfare Department. Memo.No.1729/F1/77-2, Dated 13-9-1977.

Sub: A.P. Scheduled Area Ryotwari Settlement, Regulation 1970, (A.P. Regulation of 2 of 1970) – Granting of pattas under Section 7 there of even in respect of Government lands – Instructions – Issued.

A point has been raised whether in terms of section 7 of Andhra Pradesh Scheduled Areas Ryotwari Settlement Regulation, 1970, pattas can be granted for Government lands.

This has been examined in consultation with the Revenue Department. The lands vesting in Government are governed by the instructions issued in G.O.Ms.No.971 Revenue dated 7-10-1969, G.O.Ms.No.41 Revenue Dated 12-1-1971 and G.O.Ms.No. 951 Employment and Social Welfare dated 4-12-1974; and these instructions do not empower grant of pattas to non-tribals.

The Collector Khammam i.e., therefore requested to adhere to these instructions and ensure that no patta is granted to non-tribals in respect of lands vesting in Government.

Sd/- S.R.Sankaran,  
Secretary to Government.

**Note:** The GOs referred above were struck down by High Court of Andhra Pradesh. However the Govt. memo clearly directs the concerned authorities not to grant settlement pattas to non-tribals under II of 70 Ryotwari Settlement Regulations in respect of Govt. Lands.

#### 4. Government of Andhra Pradesh Social Welfare Department

**Memo.No. 21549/F/90-3**

**Dated:25-7-1991.**

**Sub:** Scheduled Areas – Granting of pattas to the ryots under the provisions of the Settlement Regulation – Avoidance of grant of erroneous pattas to non-tribals and filing of appeals or revisions when erroneous pattas were granted – Instructions – Issued.

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1. The following Regulations were framed under the provisions of the Fifth Schedule to the Constitution of India which, among others, empower the Settlement Officer to grant ryotwari pattas to the ryots in respect of the lands under their occupation: -
  1. The A.P.Mahals (Abolition and Conversion into Ryotwari) Regulation, 1969.
  2. The A.P. Muttas (Abolition and Conversion into Ryotwari) Regulation, 1969.
  3. The A.P. Scheduled Areas Ryotwari Settlement Regulation, 1970.
2. While the first of the above three Regulations provides for the abolition of the Mahals in the Scheduled Areas of Nugur, Alabaka and Cherla in Khammam District and conversion of those Mahals into ryotwari lands, the second of the afore mentioned Regulations provides for the abolition of Muttas in certain scheduled areas of the State and conversion of those Muttas into Ryotwari Lands. The third Regulation viz., the A.P. Scheduled Areas Ryotwari Settlement Regulation, 1970 provides for the ryotwari settlement of certain lands in the Scheduled Areas in Andhra area of the State in respect of which no settlement has been effected.
3. Every tenant in a Mahal who is a member of a Scheduled Tribe is entitled to a ryotwari patta in respect of the lands held by him immediately before the notified date if such lands are in his lawful possession continuously for a period of not less than one year as on the notified date. In the case of a tenant who is not a member

of a scheduled tribe, he is not entitled to a ryotwari patta in respect of any agricultural land in a Mahal unless: -

- a He has been possession or occupation of the land for a continuous period of not less than 8 years immediately before the notified date, and
- b Such possession or occupation was not void or illegal under the A.P. Scheduled Areas Land Transfer Regulation, 1959 or any other law for the time being in force.

Similar is the position regarding the entitlement of ryotwari pattas to tribal as well as non-tribal ryots in respect of the lands in a Mutta to which the A.P. Muttas (Abolition and Conversion into Ryotwari) Regulation, 1969 applies. More or less similar position is applicable to the tribal and non-tribal ryots for the entitlement of ryotwari pattas in respect of the lands in the Scheduled Areas covered by the A.P. Scheduled Areas Ryotwari Settlement Regulation, 1970.

4. Thus, the non-tribals become entitled to the grant of ryotwari pattas in respect of the lands under their occupation only if they are in lawful occupation for a continuous period of not less than 8 years subject to the condition that their occupation was not void or illegal under the A.P. Scheduled Areas Land Transfer Regulation, 1959 or any other law for the time being in force.
5. The authority competent to grant ryotwari pattas to those in occupation of the lands particularly to the non-tribals are required to take meticulous care before allowing the claims for pattas. This is particularly necessary in view of the rulings of the Courts that once a ryotwari patta granted under the aforementioned settlement Regulations subsists, the authorities specified in the A.P. Scheduled Areas Land Transfer Regulation, 1959 or the rules made thereunder cannot entertain any proceedings for enquiring into the nature of occupations of the non-tribals as the authority competent to grant ryotwari pattas under the Settlement Regulations is presumed to have satisfied himself that the non-tribals are lawful and are not void under the Land Transfer Regulation or any other law for the time being in force. In most

of the cases in which non-tribals were granted pattas under the Settlement Regulations, the ryotwari pattas remain unchallenged by way of appeal or revision before the appropriate Settlement authorities due to illiteracy, ignorance and economic condition of the tribals who may have a better claim than the non-tribals for the patta. Hence, if the authority competent to grant pattas takes meticulous care while entertaining the claims of non-tribals, the scope for granting erroneous pattas to non-tribals, who may not have a legitimate claim, will be minimized. The human errors, if any, in the matter of granting pattas to non-tribals are challenged by way of filing necessary appeals or revisions before the appropriate settlement authorities by assistance the tribals for the purpose.

6. While the position regarding the examination of the claims for granting, ryotwari pattas to non-tribals is as indicated in the preceding paras, two cases have come to the notice of the Government during the course of verification by Special Officer for Survey of Tribal Lands and Assignment to tribals in Khammam District in the month of July, 1990. In one case five non-tribals were granted ryotwari pattas in respect of an extent of 30 acres of land while the tribals are in possession and enjoyment of the said land. In another case, non-tribals have obtained ryotwari pattas in respect of an extent of 101 acres where as the tribals are in continuous occupation and enjoyment of the said land and had the authority competent to grant ryotwari pattas taken meticulous care, ryotwari pattas would not have been granted to non-tribals. Besides, 8297 non-tribals were also granted pattas in respect of 29,554.16 hectares of land in Bhadrachalam Division. Instructions have been issued to the concerned to take action to file appeals or revisions as the case maybe before the appropriate Settlement authorities along with petitions to condone delay, if any, in preferring the appeals or revisions by assisting the tribals in cases in which non-tribals were granted ryotwari pattas in respect of the lands which are in actual possession and enjoyment of tribals. In respect of the cases in which pattas were granted

in favour of non-tribals in Bhadrachalam Division and which were not, however, verified by the Spl. Official, the concerned authorities have been instructed to verify whether any pattas to non-tribals were granted erroneously and if so to take action to file appeals or revisions as the case may be before the Settlement authorities.

7. The possibilities of the authorities competent to grant ryotwari pattas to non-tribals granting such pattas erroneously due to many a reason in other Districts cannot be ruled out. The Collectors in the Districts of Srikakulam, Vizianagaram, Visakhapatnam, East Godavari, West Godavari and Khammam are therefore requested to issue necessary instructions to all concerned to ensure: -
- i that meticulous care is taken while considering the claims of non-tribals for grant of ryotwari pattas and avoid granting pattas erroneously,
  - ii that the ryotwari pattas already granted to non-tribals are verified to ascertain whether the claims of non-tribals are allowed erroneously;
  - iii that necessary appeals or revisions are filed through tribals by assisting them before the appropriate settlement authorities against such pattas which are found to have been granted erroneously, if necessary, along with petitions to condone delay, if any.

They are requested to acknowledge receipt of this Memo.

V.GOVINDARAJAN

SECRETARY TO GOVERNMENT

### 5. Guidelines for Verification of Title and Possession of Lands in West Godavari Agency Areas

The Collector shall conduct a district level meeting with all the parties and organizations and explain them the modalities of the verification work and take their written comment for total cooperation and willingness to abide by the outcome of the verification work.

Following are the guidelines to be followed by the officials, non-officials and non-governmental organizations working in the agency area for the conduct of the verification of titles and possession of lands in the agency area:

1. The organisation concerned shall hold intensive discussions with the tribals and explain to them the kind of verification work that shall be carried out and its strategy and the possibility of the lands coming into their possession and the time frame within these lands can come into their possession. They shall take specific care to ensure that the tribals are mentally prepared to accept the fact that no or very little lands might actually come from non-tribals into their possession in certain villages.
2. Meanwhile, representatives of the organisation, representatives of the tribals, 2 or 3 Deputy Tahsildars from among the Survey Staff, sufficient number of Surveyors and, if required, Sub Collector's office shall obtain all possible information and prepare the following lists relating to verification work.
  - a They shall obtain a map of the village and shade in different colours the lands belonging to tribals and non-tribals as per 1933 RSR and keep blank the lands, which are Adangal or poramboke.
  - b The Project Officer, ITDA has already computerized the list of all the beneficiaries who have been assigned Government lands since 1933. This can also be shaded in a third colour.
  - c The list of 1473 judgments pronounced till today by the Special Deputy Collector (Tribal Welfare) in favour of Government or tribals is already computerized. In some cases, field verification has been completed by the Mandal Revenue Officers. The NGOs

concerned also have specific information relating to the present stage of cases. All these information can be compiled and a list of the stage of the cases based on office record should be prepared.

- d Information relating to land ceiling cases should be obtained from Mandal Revenue Officer's and in some cases from the ARDO(LR), Eluru.
  - e The list of post-1970 Registrations is already obtained from the Sub-Registrar's office.
  - f The list of occupants of poramboke land should be prepared as per the possession recorded in Adangal.
3. After informing both the tribals and non-tribals by a beat of tom-tom in the village, the survey team along with representatives of NGOs or the political party concerned shall go to the village along with these lists and the 1933 RSR and the latest Adangal. They shall hand over the copies of Adangal and 1933 RSR and other lists to the villagers. They shall also question each non-tribal who has come into possession of the lands after 1933 as to his claim over the land. The tribal shall be asked if they have any objections regarding the claim of the non-tribals. Similarly, the tribals may also require time to study the records and to list out their objections. Thus, after the first meeting, a week's time maybe given for both the parties and a second meeting can be held. Similarly, the information as to the latest stage of the LTR cases can be obtained from the non-tribals by asking them to produce proof of any stay order or other judgments that they have in their possession. The list of all tribals who have been assigned Government lands can be read out to ascertain whether they are in possession of the lands or not. The Sub Collector, the Mandal Revenue Officer, the Survey DTO, the Special Duty Collector (Tribal Welfare) and the representatives of the concerned organisations should participate in this meeting.
  4. In the second meeting, all the objections raised by the tribals should be taken into consideration as also the proof of titles produced by the non-tribals and the following lists can be prepared:

- i. The list of irregular assignments, which should be cancelled and fresh assignments made by the Sub Collector within 3 weeks.
  - ii. The list of Government lands, which are either in possession of non-tribals or unassigned, to be assigned to the tribals within one week.
  - iii. The list of LTR cases to be file before Special Deputy Collector to disposed off by him preferably within 3 months.
  - iv. The list of cases were appeals need to be filed before the Agent to Government which should preferably be disposed off within a period of 4 months.
  - v. The list of cases, which are pending before the Government or High Court which, by appointing advocates at Hyderabad.
  - vi. The list of land ceiling and benami cases regarding which the tribals shall furnish specific information and which shall be filed before the concerned authorities within a period of 2 weeks.
  - vii. The list of clear Patta lands of both tribals and non- tribals which shall be respected by every body.
5. Wherever it is found that sufficient land does not exist to satisfy the tribals, the organisation concerned and the Project Officer, ITDA shall identify suitable schemes like formation of Vana Samrakshana Samithis and Economic Support Schemes to provide relief to the landless.
  6. The District Collector shall provide sufficient number of competent Deputy Tahsildar and Surveyors and other staff as required to facilitate smooth conduct of the verification and survey work.
  7. In villages where the tribals have occupied lands belonging to Scheduled Castes, which are without pattas, the Collector shall make arrangements to rehabilitate them by providing lands under S.C. Land Purchase Scheme and houses under IAY, outside the agency area.
  8. To create confidence amongst the tribals and a cordial atmosphere for survey and as already discussed in the Cabinet

Sub Committee meeting, petty cases against the tribals shall be listed and action taken to withdraw those cases.

9. After completion of a village, a joint press statement shall be issued by the Sub Collector and the concerned organisation as to be outcome of the survey. A copy of the final lists prepared shall be furnished to the Project Officer for computerization and reporting to the Commissioner of Tribal Welfare.
10. In order to avoid any complications, the villages shall be selected alphabetically in the mandal or as suggested by NGO/Political parties.
11. A copy of the Adangal and 1933 RSR/fair Adangal shall be furnished to all villages sufficiently in advance.

Sd/- S.Ray

PRINCIPAL SECRETARY TO GOVERNMENT

## 6. Government of Andhra Pradesh Abstract

Tribal Welfare Provisions of Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 to have overriding effect over all other laws applicable to the Scheduled Areas of the State – Orders – Issued

### SOCIAL WELFARE (LTR.1) DEPARTMENT

G.O.Ms.No.:68

Dated: 09-07-2002

Read the following:

1. From: The Special Commissioner and Director of Settlements Lr.Rc.No.G2/2912/98, Dated: 20-12-2000.
2. G.O.Ms.No. 92, Social Welfare (POA) Dept., Dated:3-10-2001.  
\*\*\*\*
1. Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (1 of 1959) as amended by Regulation 1 of 1970 and Andhra Pradesh (Scheduled Areas Ryotwari Settlement) Regulation, 1970 (Regulation 2 of 1970) are both operational in the Scheduled Areas of the State of Andhra Pradesh. The determination of overriding effect of the Regulations has been a contentious issue.
2. The High Court of Andhra Pradesh in its judgment dated 17-8-99 in W.P.No.1739/94 in 1999 (5) ALY 372 has held that "Amended 1959 Regulation contains an elaborate scheme of primary and appeal opportunities to ensure a proper determination of the validity or otherwise of a transfer which would run foul of the provisions of the said Regulation. This is a special enactment intended to protect the interest of the Tribal. The determination of the validity or otherwise of a transfer, under this Regulation is conclusive of the issue and binds identical questions arising under any other Regulation whether earlier or later in point of time. Further the fact that Regulation 2/70 also requires the authorities there under to ensure that the grant of ryotwari patta would not be inconsistent with the Amended 1959 Regulation, would clearly indicate the legislative intent that Regulation 2/70 intends primacy to be accorded to the legislative

philosophy underlying the various provisions of the Amended 1959 Regulation. On this interactive and purposive construction of the two Regulations, the applicable interpretive principles warrant that the non-obstante provision in section 15 of Regulation 2/70 ought not be construed to permit subversion of any determination made under Amended 1959 Regulation".

3. The High Court of Andhra Pradesh has also observed that in view of the decision of the Supreme Court in "Samatha" case referred in AIR 1997 SC 3297 the prohibition against transfer and the declaration of nullity enjoyed under Amended 1959 Regulation have been held to be an emanation of para 5(2) of the Fifth Schedule to the Constitution itself, the determination of invalidity declared under the provisions of Amended 1959 Regulation will have to be held as overriding any contrary determination under any other Regulation.
4. In view of the aforesaid ruling of the High Court of Andhra Pradesh and the Government after careful examination of the matter, it has been decided to issue necessary orders in the matter. Accordingly the Government order that the provisions of Andhra Pradesh Scheduled Areas Land Transfer Regulation 1959 as amended by Regulation 1 of 1970 shall have overriding effect of any other law for the time being in force in the Tribal areas in the State in respect of the land transfers and any contrary determination under any Regulation including Andhra Pradesh Scheduled Areas Settlement Regulation 2 of 1970 in the Agency Areas of the State, is null and void. The Commissioner and Director of settlements and all the Agency Collectors are requested to take necessary further action in the matter in the settlement of issues in this regard.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF  
ANDHRA PRADESH)

C.R.BISWAL  
SECRETARY TO GOVERNMENT

**7. Government of Andhra Pradesh -General Administration  
(Special A) Department-Goms No 274 Dt:15-6-2002**

Powers of District Collectors, Joint Collectors and District Revenue Officers delegated to Project Officers, Integrated Tribal Development Agencies.

**Agency:**

1. In the capacity of Addl.Agent to Government, he will attend to the following duties:
  - b Agency administration and development.
  - c He will be appellate authority over the lands orders passed by the Special Deputy Collector (TW) on LTR.
  - d The Collector will continue to retain the power of appellate authority and interfere with the orders if he so chooses.
2. The A.P. Scheduled Areas Land Transfer Regulation, 1959 (AP Regulation No. 1 of 1959)
3. The A.P (Sch. Tribes) Money Lenders Regulation 1 of 1960.
4. The A.P (Sch. Tribes) Debt Regulation II of 1960.
5. The A.P Mahals (Abolition and Conversion into Ryotwari) Regulation 1960 & 1970.

**8. Government of Andhra Pradesh -Tribal Welfare Department**

Smt. M.Chayaratan, IAS,  
Commissioner of Tribal Welfare,  
Hyderabad

Rec.No.1186/94/TRI/Rly.Dt.19-5-1994

Sub: TWD-Land Transfer Regulation 1/1959-Khammam District  
– Aswaraopeta Mandal-Auction of Cashew gardens-Contrary to the provisions of LTR.1/59-The auction confirmed by the Vice-Chairman and Managing Director APFDC., Hyderabad Clarification-Regarding.

Ref: 1. Your Lr.Rc.No.C1(M) 2845/93 Dt. 19-11-1993

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I am to invite your attention to the reference cited and inform that A.P. Scheduled Areas Land Transfer Regulation, 1959, was extended to Aswaraopet Mandal with effect from 1-12-1963 by A.P. Scheduled Areas Laws (Extension and Amendment) Regulation, 1963, of immovable property by a person to any person other than Scheduled Tribe in the Scheduled Areas is null and void. The term immovable property under Sec.2(d) of the said Regulation includes standing crops, timber and trees. In W.P.No. 3734/93 Division Bench of A.P.High Court held that 'person' includes Government. Supreme Court of India in a case reported in AIR 1968 SC 360 held that the Government cannot be excluded from the operation of a particular Act. The Statute applies to a State too as much as it does in a citizen unless it expressly exempts the State from its operation.

In view of the above, the A.P. Forest Department Corporation Limited which is a undertaking of Government of Andhra Pradesh also constitutes a 'person'. Since the A.P. Forest Development Corporation Limited, is not expressly exempted from the operation of A.P. Scheduled Areas Land Transfer Regulation, 1959 the provisions of Regulation 1 of 1959 will also apply to the operations of A.P.Forest Development Corporation Limited, in Scheduled Areas. In view of the definition of the immovable property under the said Regulation which includes standing crops the

open auctions, of A.P.Forest Development Corporation Limited in which the right to collect and remove cashew usufruct from cashew plantations situated in Naramvarigudem village of Aswaraopeta Mandal situated in Scheduled Area are null and void under Section 3(i)(a) of A.P. Scheduled Areas Land Transfer Regulation, 1959.

Yours faithfully,

Sd/- M.Chayaratan.

## 9. Government of Andhra Pradesh- Tribal Welfare Department

M.ChayaRatan, IAS.,  
Principal Secretary to Government(TW)  
Social Welfare Department  
AP Secretariat,Hyderabad

### D.O.Letter No.5307/LTR.1/2005 – 1 Date: 4-8-2005

Dear

Sub: TW – Request for implementation of the Regulation 1/  
70 in all the Departments in Agency Areas – Reg.  
Ref: From the Collector, Khammam, Lr.Rc.No.F1-1154/05  
dt. 15-04-2005.

I am to inform you that Government have received certain representations requesting to implement the provisions of the AP Regulation 1/70 strictly in Agency Areas in the State and to cancel the licenses and permits if any issued in violation of Regulation 1/70.

A copy of the AP Regulation 1/70 is enclosed for reference. The Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 is a Regulation to regulate the transfers of land in the Scheduled Areas of the East Godavari, West Godavari, Visakhapatnam, Srikakulam(I), Adilabad, Warangal, Khammam and Mahabubnagar Districts of Andhra Pradesh. In the said Regulation the 3(1)(a) read as follows:

3(1)(a) Notwithstanding anything contained in any enactment, rule or law in force in the Agency tracts, any transfer of immovable property situated in the Agency tracts by a person, whether or not such person is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of person, who is a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 which composed solely of members of the Scheduled Tribes.

I am, therefore, to request you to look into the matter personally and issue suitable instructions to the H.O.Ds under the control of your



Department to follow the provisions of the Regulation 1/70 strictly in sanctioning all types of licenses and permits etc., and also sanction of private schools and colleges to the eligible ST persons in the Scheduled Area and protect the interest of the tribals.

Yours sincerely,  
Sd/-  
(M.ChayaRatan)

**10. Government of Andhra Pradesh  
Home (Courts. D) Department.**

Memorandum No.12=Courts. D/84-12 – Dated the 29<sup>th</sup> November,  
1984

**Sub:** Courts – Civil – Agency Sub-Judges Court, Paderu –  
Visakhapatnam District – G.O.Ms.No.381, dt.29-3-68  
Exemption of Stamp Duty of Civil suits by persons  
belonging to Scheduled Tribes – Clarification – Issued.

**Ref:** Letter No.1538/83-C, dt.28-8-1983 of the Agency Sub-  
Judge, and Special Assistant Agent, Paderu,  
Visakhapatnam District.

In the letter cited the Agency Sub-Judge and Special Assistant Agent, Paderu has stated that in G.O.Ms.No.381 Home (Courts.A) Department, dated 23-3-1968 the Government in exercise of the powers under section 68 of the Andhra Pradesh Courts fees and Suits Valuation Act. VII of 1956 has remitted the payment of fees chargeable under the Act in respect of civil suits State of Andhra Pradesh. He has further sought for clarification whether the exemption granted under the GO is inclusive of stamp on the Vakalat, process and other petitions in the suit or confined only to the fees payable on the plaint.

It is, therefore, clarified that the exemption granted under the above GO is extended to other proceedings in the suit by virtue of section 141 of the Civil Procedure Code as the side section read with explanation makes applicable to all other proceedings in the court of Civil Jurisdiction. Fees payable on Vakalat is also exempted. It is further clarified that the notification cannot be given extended meaning as to cover fees payable for serving and executing process which is liable under Law.

M.Sreeramulu,  
Deputy Secretary to Government.

**11. Government of Andhra Pradesh  
Social Welfare (F1) Department.**

Memorandum No.2422/F1/79-6 – Dated 20-6-1980

Sub: Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1969 – Certain Amendments - Issued.

Ref: G.O.Ms.No.763, Revenue, dt.18-8-1969.

In exercise of the powers conferred by Sub-Section(1) of Section 8 of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (Andhra Pradesh Regulation 1 of 1959), the Governor of the Andhra Pradesh hereby makes the following amendments to the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1969.

AMENDMENTS

In the said rules, ———

I. After rule 17, the following rules shall be added, namely:-

“18. (1) A document relating to transfer of immovable property situated in the Agency Tracts required to be registered under section 3B by any registering officer appointed under the Registration Act, 1908 shall be presented before such Officer along with a declaration in Form ‘K’ in triplicate as attested and verified by the Agent concerned.

(2)(a) Before presenting any document for registration as aforesaid, the transferee shall submit the declaration in Form-K duly filled and signed by him to the Agent for verification and attestation.

(b) On receipt of any such declaration in Form-K for verification and attestation, the Agent concerned shall within thirty days cause an enquiry to be made by the Agency Munsif—

(i) Whether the transferee is a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964, which is composed solely of members of the Scheduled Tribes, and;

(ii) Whether the transfer is in contravention of sub-section(1) of Section 3 of the Regulation and on receipt of the verification report from the Agency Munsif return the declaration in Form-K after duly endorsing the same as in the Form-L to the transferee as per the said verification report.

19. (1) The procedure prescribed for trial of summons cases under chapter XX of the Code of Criminal Procedure, 1898, (Act No.5 of 1898) shall be followed for the trial of cases under section-6A.

(2) The Courts constituted under the Code of Criminal Procedure, 1898 (Act No.5 of 1898) having jurisdiction over the area concerned shall have jurisdiction of try cases under Section 6-A”

## V. Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA)

### Frequently Asked Questions

The enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA) is an important watershed in the history of tribal empowerment in India especially relating to tenure security on forests and forest land. The Act became operational through notification of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules on January 1, 2008 which marked a historic journey to recognize and vest Forest Rights to the marginalized and vulnerable who are dependent on forests for their sustenance and their existence.

Over a period of last four years of implementation of the Act, some problems impeding the implementation of the Act in its letter and spirit had come to the notice of the Ministry of Tribal Affairs. Some of the major concerns regarding implementation of this Act related to high rate of rejection of claims, little progress in the recognition of community rights and habitat rights of PTGs, convening of Gram Sabha meetings at the Panchayat level, insistence of particular form of evidence, claimants not being informed about rejection of claims and inadequate awareness about the provisions of the Act and the Rules, etc. Based on this experience, the Ministry of Tribal Affairs issued detailed **Guidelines** to the States in July 2012 and notified **amendment to the FRA Rules** in September 2012 in order to develop further clarity on the interpretation of the Act and to streamline its implementation. The following text is from a book let "End poverty together, publication supported by Action Aid 2012)

1. **Section 3(1)(c) of FRA confers ownership rights over minor forest produces (MFP) to forest dwelling STs and Other Traditional Forest Dwellers. Can ownership rights over Tendu/Kendu, Bamboo which are nationalised forest produce under the State forest laws be conferred under FRA?**

Yes. The recognition and vesting of ownership rights over all minor forest produces (MFP) including bamboo and tendu/kendu are to be conferred to forest dwelling STs and Other Traditional Forest Dwellers as and when the claim for such rights is made.

- Section 2(i) of FRA clearly defines the term "minor forest produce" which include bamboo and tendu/kendu.

### 2. **Whether the shift of ownership of MFPs from the State in case of certain nationalised MFPs, like, tendu patta, would not lead to exploitation of MFP gatherers by the private traders?**

- The shift of ownership to right holders does not necessitate withdrawal of the State agencies from MFP trade. It is advised that the State agencies should continue to extend their support system to the MFP gatherers by way of purchasing the produces to provide minimum support price and safeguard against any potential exploitative cartel of buyers. A parallel may be drawn in the manner with process followed for rice and wheat.
- MFP gatherers may be organized through formation of cooperatives/federations or producer companies to enhance bargaining power vis-à-vis MFP buyers.
- Abolition of monopoly of State Agencies in the trade of nationalized MFPs will in fact strengthen institutions engaged in trade of MFPs and making them more competitive and this will reduce exploitation of the rights holders under the watchful eye of the State.

### 3. **Can the Gram Sabhas issue MFP transit permits and what will happen to the existing transit rules?**

- Yes, the Gram Sabha has the authority to regulate transit permit for MFPs where rights have been recognized under FRA.
- The Forest Rights Amendment Rules, 2012, notified on 6.9.2012 provide that the transit permit for transportation of minor forest produce shall be issued by the Committee constituted by the

Gram Sabha under Rule 4(1)(e) or the person authorized by the Gram Sabha. These Rules further provide that the Gram Sabha shall approve all decisions of this Committee pertaining to issue of transit permit.

- The State/UT Governments, therefore, should modify their existing transit permit regimes in relation to transportation of minor forest produce with respect to right holders under FRA and align it with the provisions of FRA.

**4. Will issuance of transit permits by the Gram Sabha lead to over exploitation of the MFPs?**

- No, the issue of transit permit by the Gram Sabha has no correlation with over exploitation of MFP. There are enough safeguards in the law to ensure that over exploitation of MFPs is avoided.
- For example, as per Rule 4(1)(e) of FR Rules, 2008, the responsibility for carrying out the provisions of Section 5 of the Act has been given to a Committee to be constituted by the Gram Sabha.
- The Forest Rights Amendment Rules, 2012 notified on 6.9.2012 now require the said Committee to prepare a conservation and management plan for community forest resources in order to sustainably and equitably manage such community forest resources for the benefit of FDSTs and OTFDs and integrate such conservation and management plan with the micro plans or working plans or management plans of the Forest Department with such modification as may be considered necessary by the Committee. The monitoring and control of the said Committee vests with the Gram Sabha. The Gram Sabha, therefore, has to ensure that the transit permits are issued by such Committee with proper assessment and in conformity with the conservation and management plan and that such transit permits do not lead to over exploitation of the minor forest produce.
- The Gram Sabha can further modify the conservation and management plans and impose restrictions if it considers that

the existing regime of collection, use and disposal of minor forest produce is leading to over exploitation of minor forest produce.

- The Gram Sabha as well as the right holder has also been empowered under the Act to stop any activity that adversely affects forest, wildlife, biodiversity among other things.

**5. According to PESA, ownership of Minor Forest Produce has already been vested with the Gram Sabha, then what is the need and legality of the various provisions of FRA that give SDLC/ DLC the power to regulate and recognise the ownership of MFPs?**

- The application of PESA is limited to Scheduled Areas only, therefore it gives the ownership of the MFPs to Gram Sabhas only in the Scheduled Areas. Large tribal populations also live outside the Scheduled Areas which are covered only under FRA. Moreover, PESA does not require administration to give a written title to each right holder, which FRA does.
- SDLC/DLC are only part of the process of recognition of rights. The regulation of MFP vests with the Gram Sabha.

**6. Can the habitat rights of the PVTGs under FRA also include revenue lands?**

- Ordinarily No, unless there are recorded forests or there are forests that come within the definition of forest land under the Act on such revenue lands (land under the administrative control of the revenue department) and they overlap with the habitat of the PVTGs (Particularly Vulnerable Tribal Groups).
- Further, if the habitat area (or its part) of a PVTG does not come within the definition of forest land then such habitat rights cannot be recognized under FRA. However, it may be recognized under the respective revenue laws of the concerned State, if the State so desires in order to protect the habitat rights of the PTGs.

**7. How will the claims on rights of PVTG groups and habitat rights be facilitated particularly in view of the habitat involving more than one Gram Sabha?**

- The definition of habitat under Section 2(h) and the right to such habitat has been clearly laid down in the law under section 3(1)(e) of the Act. Rule 12(1)(d) further directs Forest rights Committee to ensure that the claims from PTGs are verified when such communities or their representatives are present.
- Further, the right to community tenures of habitat and habitation may be recognized over customary territories used by the PVTG for habitation, livelihoods, social, economic, spiritual, cultural and other purposes. In some cases the habitats of PTGs may overlap with forest and other rights of other people / communities.
- Rule 8 also envisages the role of the District Level Committee (DLC) to ensure that such rights of the PVTGs and other vulnerable communities are addressed keeping in mind the objectives of the Act.
- Further, it has now been provided in the Amendment Rules, 2012 notified by the Ministry on 6.9.2012 that, in view of the differential vulnerability of Particularly Vulnerable Tribal Groups (PVTGs), the DLC shall ensure that all Particularly Vulnerable Tribal Groups receive habitat rights, in consultation with the concerned traditional institutions of Particularly Vulnerable Tribal Groups and that their claims for habitat rights are filed before the concerned Gram Sabhas wherever necessary by recognizing floating nature of their Gram Sabhas.
- In view of the above provisions in the Act and the Forest Rights Rules, the DLCs should play a proactive role by initiating the process of recognition of rights of the PTGs in consultation with their traditional institutions and ensure that their claims for habitat rights are filed before the concerned Gram Sabhas.
- Where the claims of PTGs have already been filed, the DLCs should take steps to ensure recognition of their rights along with mapping of the area of each claim over which their rights have been recognized.

**8. Whether OTFDs who do not fulfill the condition of occupation of forest land for three generations (75 years) prior to 13<sup>th</sup> December 2005 would be eligible for recognition of forest rights under FRA?**

- The Act does not envisage the occupation of forest land for three generations (seventy five years) prior to December 13, 2005 for qualifying as OTFD under the Act. The occupation of forest land should be prior to December 13, 2005 as per Section 4 (3) of the Act which stipulates the condition of occupation of forest land for recognition and vesting of forest rights. This condition does not differentiate between forest dwelling STs and OTFDs.
- To qualify as OTFD and be eligible for recognition of rights under FRA, three conditions need to be fulfilled- 1) Primarily resided in forest or forests land for three generations (75 years) prior to 13-12-2005 2) depend on the forest or forests land for bonafide livelihood needs 3) occupied forest land prior to 13-12-2005.
- Primarily resided in does not mean occupation. Proof of residence in the village for 75 years where claim has been filed and dependence on forest land will suffice for being considered as OTFD. As clarified in an earlier letter No.17014/02/2007-PC&V(Vol.VII) dated 17.06.2008, regarding the phrase "primarily resided in", "such Scheduled tribes and other traditional forest dwellers who are not necessarily residing inside the forest but are depending on the forest for their bona fide livelihood needs would be covered under the definitions of forest dwelling scheduled tribes and other traditional forest dwellers given in Section 2(c) and 2 (o) of the Act.

**9. What would be the legal status of the titles given under FRA?**

- The title given under the FRA is a legal title and is a formal recognition of forests right which is recognized and vested in the right holders in form of a signed document by the competent authority under the Act. It shall be registered jointly in the name

of both the spouses or a single head in case only one head is alive as the case may be. It has the force of law and are non transferable, inalienable but heritable as per Section 4(4) of the Act.

**10. Where are the records of rights going to be maintained?**

**Whether in the revenue records or forest records?**

- As regards maintenance of records of rights, Rule 12 A of the Amendment Rules, 2012, notified on 6.9.2012, provides that on completion of the process of recognition of rights and issue of titles under the Rules, the Revenue and the Forest Departments shall prepare a final map of forest land so vested and the concerned authorities shall incorporate the forest rights so vested in the revenue and the forest records within the specified period of record updation under the relevant State laws or within a period of three months, whichever is earlier.
- It is suggested that if the forest land is under the administrative control of the revenue department, the revenue department shall maintain record of rights. If the forest land is under the administrative control of the forest department, the forest department may maintain the records and the records of the titles for individual land rights also need to be recorded in the revenue records. States may take appropriate steps to enter the record of rights in the relevant State records. What is most important that every such record is not only verified on the ground but also reconciled with both forest and revenue records. For example, State of Uttar Pradesh has amended its record of rights (termed as Category (6) under their revenue law) to add a new column for maintenance of forest rights.

**11. What impact the conversion of forest villages would have on the other communities apart from the scheduled tribes residing in the same villages?**

- The conversion of the forest villages into revenue villages shall in no way affect any of the communities residing in the village, even though they may not be belonging to Scheduled Tribe or

qualifying as OTFD. FRA does not abrogate rights or privileges recognized under any other Act, Rule or Government Order. In fact, the conversion of forest villages into revenue villages would enable the Government to extend all the development facilities to these villages and the residents of this village would be entitled to get the benefits of the development programmes and schemes of the Government.

**12. Who will prepare conservation and management plan for community forest resources?**

- As per the FR Amendment Rules, 2012 notified on 6.9.2012, the committee constituted by the Gram Sabha under Rule 4 (1)(e) for carrying out the provisions of Section 5 of the Act is required to prepare the conservation and management plan for community forest resources in order to sustainably and equitably manage such community forest resources for the benefit of forest dwelling STs and OTFDs.

**13. Can Gram Sabhas be called at the Gram Panchayat level for the purpose of FRA?**

- No, Gram Sabha should not be called at the Gram Panchayat level for the purpose of FRA. A Gram Panchayat normally consists of one or more revenue villages. As per the provision of the Act, Gram Sabhas are to be held at the village level and village has been defined under section 2(p) of the Act.

**14. Can the Gram Sabha meetings be held at the habitation/ hamlet level even in areas not coming under PESA?**

- Yes, the Gram Sabha may be held at the hamlet level in areas not coming under PESA.
- The terms "Gram Sabha" and "village" for purposes of FRA are already defined in Sections 2(g) and 2(p) of the Act where any forest settlement, forest village, old habitation or settlement and unsurveyed village may also be treated as village among others. Such entity, even if not notified or recorded as village are recognized as village for the purpose of this Act.

**15. Whether the community rights of the non-Scheduled Tribes who are traditionally using the community resources in the Schedule V areas where PESA is applicable would be affected if they are not eligible for recognition of these rights in those areas under FRA?**

- No, the community rights of non-Scheduled Tribes or ineligible OTFDs will not be affected in Schedule V areas where PESA is applicable.
- Section 13 of the FRA clearly supports such an arrangement as the FRA is in addition to and not in derogation of any other law for the time being in force.

**16. Whether the title holders have the rights over the trees also standing on the forest land for which their rights have been recognised and vested under FRA?**

- Yes, the title holders have right over trees on the forest land for which rights have been recognized under FRA.
- Section 3(1)(a) of the FRA recognizes the right of the FDSTs and OTFDs to hold and live in the forest land for habitation or for self-cultivation for livelihood by a member of a forest dwelling Scheduled Tribe or other traditional forest dwellers. In view of the above, the titleholders have the right over the trees standing on the said forest land but for felling and disposal of the trees, the same shall be treated in the same manner as trees on private land are treated under the relevant State laws and shall be subject to conditions, requirements for permission etc. as specified in those laws.
- For further clarity, the number of trees on the land with species and size should be mentioned in the title. There would be no restriction on collecting and using the minor forest produce from such trees.

**17. The number of claims settled under Community Rights is very small as there is lack of adequate documentary evidence to corroborate those claims. What are the**

**documentary evidences required in case of community rights?**

- Rule 12A(11) introduced through the recent amendment specifies that the SDLC / DLC cannot insist on a particular evidence in support of the claim. Physical and oral evidence is also admissible under Rule 13. Official documents such as working plans, gazetteers, forest settlement reports, and other types of evidence mentioned in Rule 13 may be considered. Further the evidence for rights over community forest resource and evidence for other forest rights in including community are distinguished in Rule 13 (1) and (2). In fact more evidences such as Government records or earlier classification of current reserve forest as protected forest or as gochar or other village common lands, nistari forests as well as earlier or current practice of traditional agriculture have been added as evidence for "community forest resource".

**18. After recognition of rights under FRA can the forest rights holders get any support for development of the forest land and community forest resources?**

- The amendment rules now provide for post claim support to the forest rights holders and require the State Government departments especially tribal and social welfare, environment and forest, revenue, rural development, Panchayat raj and other departments to provide support for land improvement, land productivity, basic amenities and other livelihood measures under existing government schemes to such claimants and communities whose rights have been recognized and vested under the Act.

**19. Can the states get separate budget allocations for the demarcation of CFR areas and smooth implementation of FRA?**

- Article 275(1) provides window to each state to demand for grants for implementation of FRA. Grants under Special Central

Assistance (SCA) to Tribal Sub Plans (TSP) can also be demanded for the development of land over which rights have been recognized.

**20. A lot of social capital has been invested by states in the capacity building of JFM Committees in the last 15-20 years for the protection, conservation and management of the forests. Shouldn't these JFMCs be converted into committees under 4(1) (e).**

- It is the prerogative of the Gram Sabha to decide whether to nominate the members of the JFMCs in the new Committee under Rule 4(1)(e) or constitute it with new members. It is further clarified that only the members of the Gram Sabha are eligible to become a member of the Committee under Rule 4(1)(e). Automatic conversion of JFMCs into Committee under Rule 4(1)(e) is neither mandated nor desirable under the FRA as the objectives, structure and mandate of JFM is different from that of Committee under Rule 4 (1) (e).

**21. Should JFM Areas be directly converted to Community Forest Resource Titles**

- As per the provisions of Act and Rules, automatic conversion for JFM areas into CFR areas is neither mandated nor desirable as the objectives, structure and mandate of JFM is different from that of rights under community forest resource. However, wherever JFM areas are co-terminus with CFR boundaries, Gram Sabha may apply and get the title to such community forest resource, subject to the final approval by DLC.

**22. Does Development right under section 3(2) which involve land use changes need to be referred under the Forest Conservation Act 1980?**

- No permission is needed under FCA, since the Forest Rights Act frees the rights of all encumbrances and procedural requirement of the Forest Conservation Act through Section

4(7). However such conditions must fulfill the conditions under Section 3(2) of the Act namely diversion of less than one hectare, cutting of not more than seventy five trees, recommendation of the Gram Sabha and limited to the thirteen items listed under Section 3(2) of the Act. Procedure for diversion of forest land under Section 3(2) of FRA has been laid down by the Ministry of Tribal Affairs vide Annexure to letter No-23011/15/2008-SG.II, dated- May 18, 2009.

**23. Is FRA applicable in National Parks and Sanctuaries? Would it not further threaten the last existing healthy forest with wildlife?**

- Yes, FRA is applicable in National Parks and Sanctuaries. FRA only recognizes pre existing rights which are already being exercised by the eligible persons in the National Parks and Sanctuaries. Therefore there is nothing new that is being done to bring fear to the future of National Parks and Sanctuaries except securing their tenure on such lands. Further, where such rights may potentially cause irreversible damage to wildlife, FRA provides for creation of inviolate areas for wildlife protection (called Critical Wildlife Habitats) through a democratic and transparent process after recognition of rights under the FRA is complete.



## **VI. Land Administration and Legal Institutions in the Scheduled Areas-Few Challenges**

### **1. Pro Tribal Judiciary: Agency Courts Vs. Judicial Courts**

This paper examines the existing redressal mechanisms in the administration of civil justice in the tribal areas and how these systems preferred over Judicial Courts.

#### **Introduction**

The Tribal population of the country is close to 8 per cent of the total population and considered to be 23 per cent of the total indigenous population of the world. The State of Andhra Pradesh is a traditional home for 35 tribal communities, constitute of 6.59 per cent of the total population of the State as per 2001 census reports. The Tribal sub-plan Area extending over 31,485.34 Sq.kms. in the districts of Srikakulam, Vizianagaram, Warangal, Visakhapatnam, East and West Godavari, Khammam, Adilabad and Mahabubnagar districts constitute the traditional habitat of nearly 31 Tribal groups. The Tribal groups viz., Yerukula, Yanadi and Sugali or Lambada, Nakkala are mainly living in the plain areas, outside the Scheduled Areas. The tribal areas are mainly inhabited by tribes who by fact of their being primitive and innocence, are extremely vulnerable to exploitation by outsiders.

#### **Evolution of Agency Courts System**

The Scheduled Areas are not governed by the same laws as in the rest of the country for more than a century. From the earliest times those areas known to be backward were excluded from the operation of the laws of the country either completely or partially and they were directly administered under laws made by the Executive similar to the orders originally resembling the orders in the council of the British Crown. The reasons for making the special provisions for the Scheduled Areas and Tribes are that their social and other customs and their way of living are different from the rest of the country and tribals being backward and not educated they were taken advantage and exploited by others. Therefore it has been felt that they should not be governed by general laws of the land and that certain safeguards have to be provided to protect them from exploitation hence several Acts and Regulations were passed from time to time.

One of the earliest of the enactment regarding agency areas is the Ganjam Vizagapatnam Act 1839. The object of this Act is to provide from the administration of justice, civil and criminal in the agency Areas and for the collection of revenue. Subsequently the Scheduled District Act 1874 was brought into force in view of the difficulty arose in determining the laws in force by then in the Scheduled Areas. The Act specified the Scheduled Tracts and the Local Governments were given the power to extend by public notification to any Scheduled District with or without modification any enactment in force in "British India".

Under Section 6 of the said Scheduled Districts Act 1874 the Governor was pleased to make the A.P. Agency Rules 1924 for the administration of the agency tracts and for the regulations of the procedures of the officers appointed to administer them in the agency areas of Andhra region. These Agency Rules were extended to Telangana region with effect from 1-12-1963. Under the said rules it has been provided that the Collectors and District Magistrates of the districts shall be the Collectors and District Magistrates within the agency tracts under the designation of the Agent to the State Government.

#### **Why Agency Courts system preferred over Civil Courts?**

The very important principle of natural justice is that decisions should not be delivered unheard and should not be reached behind one's back. In true spirit it is not correct to say that while delivering the decisions both parties to be heard does not mean, merely giving the physical opportunity to be heard. Because in so many occasions, the parties (generally tribals) are not able to adduce evidence before the Court of law due to their simplicity. Innocence and very nature of shyness to talk. In the tribal areas most of the transaction – be it sale of land or monetary is mainly by word of mouth and there exists no system of written documentation. A decision arrived at by solely depending on the documents would put the poor and innocent tribal to great injustice.

In agency areas, the existing system of Judiciary is quite adequate and serves the interests of the tribals and the principles of natural justice is well protected as the present presiding officers of Revenue department who are entrusted with the functions of judiciary are personally well

acquainted with the age old customs, habits, peculiar traditions and special circumstances prevailing in the nook and corners of the agency area, among different sub-sets of tribals because the Revenue Officers are bound to tour intensively the villages invariably to discharge their legitimate duties viz., solving land disputes, for assignments of land for agriculture, to maintain law and order, to supervise developmental works etc, and frequently used to make night halts in the villages which makes them practically well acquainted with the tribal traditions, customs and also superstitions. This practical knowledge, will help them while discharging judicial functions for delivering apt decisions/judgments not only by hearing the parties but also by studying the hidden factors of the case which leads to dispute and if necessary by taking a lenient view keeping in mind the special and peculiar traditions, customs of the tribal society besides socio-economic factor, which serves largely the interest of the tribal society and by protecting the true spirit of the principles of natural justice. The Revenue Authorities will have comprehensive field knowledge about the persons who are in actual possession of lands even in some cases where the documentary evidence shows possession of land in favour of non-possessors of the land. So the existing agency courts are manned by revenue authorities are cautious in granting injunctions suits filed by non tribals against the tribals who are in actual possession of lands based on the field inspection reports. There is subordinate field level machinery for the Agency Courts which provides actual field situation based on the fact finding will help to arrive correct decision in the adjudication of civil disputes particularly land arising from tribals and non-tribals in the Scheduled Areas. In the Agency Courts the revenue authorities can summon the subordinate field personnel's to produce concerned land records in adjudication process which the tribal in the civil suits would be unable to gather the documentary evidence which are in their favour, in view of their illiteracy, poverty and inaccessibility to the Revenue offices due to distance from their habitations and familiarity.

The tribal villages are scattered over large areas. Generally the territorial limit of a Mandal would be around 100 km and not well connected by road. Many times the tribals walk or trek to the place of trial as they do

not have transport facilities. Some of the villagers have to negotiate hills, streams, etc to reach the adjudication centers. The presiding officers of the Agency Court also conduct camp courts as and when need arises to make more accessible to the people in the agency area. Now there is Agency Munsif court at each Mandal head quarter which are accessible to the public.

Rule 1 of the A.P. Agency Rules 1924 makes it clear that for the trial and determination of the suits coming before them, the Agent to the State Government / District Collector, the Agency Divisional Officer / Sub-Collector / RDO and Agency Munsif / Tehsildhar are vested with the same powers as are vested in the District and Revenue Courts in the ordinary tracts of the State of Andhra Pradesh. The Provision of Rule 3 of the Agency Rules is exactly similar to that of Section 9 of CPC., By virtue of Rule 3 of the Agency Rules, the Agency Court has the jurisdiction to try all suits of civil nature, excepting suits of which their cognizance is either expressly or impliedly barred. The jurisdiction of Agency Court is not ousted either explicitly or impliedly by another Statute. The Agency Court is a substitute for a Civil Court in every respect in the Agency Areas. Agency Courts like Civil Courts have plenary powers to try all suits, which involve determination of any civil right. Rule 5 provides that Agency Munsif shall have cognizance of the suits for movable or immovable property not exceeding in value of Rs. 500/-. Rule 7 provides that suits of value exceeding Rs 5000/- shall be instituted in the court of the Agent to the State Government. As per Rule 6 all other suits shall be instituted in the Court of the Agency Divisional Officer having Jurisdiction. The present courts are accessible to the people even there is a Agency Munsif court at Mandal level.

Therefore the provisions of the Agency Rules which are governing the administration of civil justice are very clear and do not deprive the people to access justice. In fact the provisions of A.P. Agency Rules are much more simple than the provisions of the Civil Procedure Code (CPC).

#### **Exclusion of Civil Courts Act to Scheduled Areas and Legal Precedents**

The Constitutional bench of the Supreme Court in State of Nagaland Vs. Ratan Singh reported in (1966) 3 SCR 830 where reference was

made to Article 244 of the Constitution of India, which make special provisions for the administration of justice in Scheduled and Tribal areas. Challenge was made to statutes and Rules providing for the exclusion of the jurisdiction of Civil and Criminal courts in the discretion of the Governor. The Supreme Court upheld the Statutes and Rules as valid observing:

“The policy and purpose may be pointed out in the section conferring the powers and may even be indicated in the preamble or elsewhere in the Act. The preamble of the Scheduled Districts Act shows that these backward tracts were never brought within, but from time to time, were removed from, the operation of general Acts and Regulations and the jurisdiction of the ordinary courts of judicature was also excluded. It was therefore necessary to ascertain the enactments in force and to set up a machinery for making simple Rules. The Act conferred on the local Governments power to appoint officers for administration of civil and criminal justice within the Scheduled Districts and empowered the local Government to regulate the procedure of the officers so appointed and to confer on them authority and jurisdiction, powers and duties incident to the administration of civil and criminal justice. These provisions afforded sufficient guide to the local Government that the administration of civil and criminal justice was to be done under their control by the officers appointed by them and the procedure which they were to follow must be laid down. This was not an instance, therefore, of excessive delegation at all.

Referring to the reference made to the Civil Procedure Code the Constitutional Bench observed:

“How the spirit of the Code is to be applied and not its letter was considered by the Supreme Court in *Gurumayum Sakhigopal Sarma Vs. Onghi Anisija Devi* (Civil Appeal No. 659 of 1957 decided on 9th of February, 1961) in connection with the Code of Civil Procedure. With reference to a similar Rule that the courts should be guided by the spirit and should not be bound by the letter of the Code of Civil Procedure this Court explained that the reason appeared to be that the technicalities of the Code, should not trammel litigation embarked upon by a people unused to them”.

The Constitutional Bench then explained why the Civil and the Criminal courts are excluded in Para 30 of the decision as under:

“Laws of this kind are made with an eye to simplicity. People in backward tracts cannot be expected to make themselves aware of the technicalities of a complex Code. What is important is that they should be able to present their defence effectively unhampered by the technicalities of complex laws. Throughout the past century the Criminal Procedure Code has been excluded from this area because it would be too difficult for the local people to understand it. Instead the spirit of the Criminal Procedure Code has been asked to be applied so that justice may not fail because of some technicality. The argument that this is no law is not correct. Written law is nothing more than a control of discretion. The more there is of law the less there is of discretion. In this area it is considered necessary that discretion should have greater play than technical Rules and the provision that the spirit of the Code should apply is a law conceived in the best interests of the people. The discretion of the Presiding Officer is not subjected to rigid control because of the unsatisfactory state of defences which would be offered and which might fail if they did not comply with some technical rule. The removal of technicalities, in our opinion, leads to the advancement of the cause of justice in these backward tracts.”

In *Ram Kirpal Bhagat Vs. State of Bihar*, (1969) 3 SCC 471 / (AIR 1970 SC 951), the Hon'ble Supreme Court while dealing with the Scheduled areas and the law applicable to the Scheduled Areas under paragraph 5 of the Fifth Schedule of the Constitution held that

“Applying laws to any area is making regulations which are laws. Application of law is one of the recognized form of legislation. Law can be made by referring to a statute or by citing a statute or by incorporating a statute or provisions or parts there of in a piece of legislation as the law which shall apply.”

Therefore excluding the application of the provisions of the A.P Civil courts Act 1972 to the Scheduled areas of Andhra Pradesh is a legislative act under the Constitution of India. Law will not permit to question the legislative wisdom nor the legislative policy laid down in a Statute by raising litigations through the court of law.

The High Court of Andhra Pradesh held that dispute between the parties whether they are tribals or non tribals in respect of property located in the agency areas, civil court jurisdiction is ousted and vested with agency courts<sup>1</sup>.

### **Intervention of Supreme Court in AP Agency Courts System**

Batch of Writ Petitions and Civil Revision Petitions filed by the different parties before the High Court of Andhra Pradesh raising a question whether the Civil Courts have jurisdiction in the matter of which the cause of action wholly arose in the Scheduled areas. The AP High court passed a common Judgement on 27<sup>th</sup> June 2000, in several WP Nos 15103/93 etc and CRPs 974/98 etc observing that “the State Government to take expeditious steps as early as possible to issue any notification extending the provisions of the Civil Courts Act with retrospective effect in the Scheduled Areas for the peace and good government and for the speedy disposal of civil cases in the Scheduled areas, further declaring that the decrees passed by the Civil courts are null and void as they have no jurisdiction to decide the matters arising out of the Scheduled Areas. The unsuccessful non tribal parties including Nagarjuna Grameen Bank etc filed a civil appeals No 5030-5036 of 2004 in the Supreme Court challenging the order of High Court of AP.

The supreme court passed an interim order dated 23-01-2008 as follows” “one way of resolving this problem is by either issuing a notification or by an amendment in the Act to the extent that the Civil Courts Act shall be extended to the Scheduled Areas of the State except where the dispute involved is between people of Scheduled and non Scheduled areas.” At the request of the Advocate-on-Record time was granted for implementing the said direction.

While the matters stood over a tribal organization namely ‘Girijan Yuvajana Samkshema Sangham’ and the author of this article filed an impleading application seeking the recall of above interim order passed by the Supreme Court. The Supreme Court directed the Government to inform its decision on this matter. The High Power committee headed by the Chief Minister of Andhra Pradesh is constituted<sup>2</sup> by the Government of Andhra Pradesh to examine the issue of extension of

A.P. Civil Courts Act 1972 to the Scheduled Areas in the State of Andhra Pradesh taking into consideration of certain alternatives including, the extension of Civil Courts Act to the Scheduled Areas or retention of the existing system or better alternative to the Civil Courts by bringing suitable amendments to the existing system of civil justice keeping in mind the future needs and requirements for expeditious disposal of cases. The High Power Committee has to inform its stand to the Supreme Court to pass its final orders in the matter.

### **The Role of Tribal Advisory Council and its decision**

An important feature of the Constitutional provisions under Fifth Schedule is that the legal and institutional frame for the tribal areas is expected to be so designed as to be in consonance with the people and the institutions in these areas. It was on this count that the legislative powers at the State level vested in the Governor in respect of Scheduled areas. The major features of the Fifth Schedule area are vested with the Tribal Advisory Council, Governor’s powers to adapt laws passed by Parliament and State Legislatures and making Regulations for the Scheduled Areas having force of law and extension of the executive power of the Union Government to the giving of directions to a State for administration of Scheduled areas.

While dealing a W.P. No.14275/2004 filed by Asu Nagamma seeking the relief of entrustment of the Administration of Civil Justice to a qualified Judicial officer in tribal areas, the AP High Court dismissed it holding that “it is needless to direct that the Government shall take an appropriate decision in the matter in the light of the recommendations of the Committee and the views of the Tribes Advisory Council”. In this context the Tribal Advisory Council appreciated the initiative of Tribal Welfare Department to evolve an alternative judicial procedure where in administration of justice would be much more decentralized and justice brought within the reach of the tribal community and made inexpensive and simple” as per the 96<sup>th</sup> Meeting of AP Tribal Advisory Council dated 1-7-2005.

Further in the present context of Supreme Court case in Civil Appeal No 5030/5036 of 2004 the APTAC has resolved that “the existing system in resolving the disputes provide relief to tribals and the notification GOMs

No 1573 dated 30-10-1972 issued by the Governor of Andhra Pradesh withholding the applicability of A.P. Civil Courts Act, 1972 to Scheduled Areas may be continued"<sup>3</sup>.

### **Another Existing Forum of ADR- Traditional Tribals Panchayat System**

Traditional Panchayat system is another forum for adjudication of civil disputes continued to exist in majority of tribal areas. These Panchayats enjoy full confidence of their tribal communities with due regard and recognition. Traditional Panchayat system consists of Community Headman, Messenger and other community leaders. In most of the villages; tribals have an informal council of elders for settling of disputes and safeguarding the interest of communities. Disputes like, affecting the respect of community, extra marital relationships, causing hurt, quarrels between wife and husband, father and son, such other domestic quarrels, marriage disputes, maintenance, causing damage to the properties, etc., are dealt with by these Traditional Panchayats. The Traditional Leaders are familiar with customary practices of their own community. The parties in dispute, traditional leaders and other villagers are invited at the time of settling the dispute; the parties must obey the orders of the Tribal Panchayat.

The justice by Tribal Panchayat is simple and elementary and distinct from justice in urban areas which is complex, sophisticated and technical. The prevailing system of administration of justice is cluttered with dilatory procedures and is burdened with hierarchy of appeals and revisions consuming decades. The laws of Tribal Panchayat though are unwritten, traditionally been held valid for generations and are binding on Tribal Society. The Tribal Council is the authority of justice to the community. The laws based on customs and traditions of tribals are based on more equality and give the protection to the tribals. The proceedings are in open and in the language of the tribals concerned so that many villagers have an opportunity to witness the proceedings. The Council is accountable to the community and the proceedings are transparent. Article 13(3)(a) of the Constitution of India says the "law" includes any ordinance, order, bye law, rule, regulations, notification, custom or usages having in the territory of India the force of law.

The provisions of the Panchayats (Extension to the Scheduled Areas) Act 1996 (PESA Act), which also provides for the exclusion of the Civil Courts and the adjudication of disputes by the gram sabhas following customary law. Thus the power to resolve disputes among the people of the communities through alternative dispute resolution vest in the Gram Sabha in the Fifth Scheduled Areas.

### **Conclusion**

The need for CPC was elaborately discussed by Supreme Court in the case of Salem advocates on record Vs. Union of India (2005) where in the advocates challenged the introduction of Alternative Dispute Resolutions (ADR) by amending the Section 89 of CPC and order X of CPC, adding Rule 1 (A), 1(B) and 1(C) encouraging alternative dispute resolutions to minimize the litigation by following CPC.

The enactments like Arbitration and Conciliation Act 1996, "used as a phrase the provisions of Arbitration Act is not bound by CPC" which means the enactment wants to avoid the CPC as far as possible. It is evident from the various Tribunals like industrial tribunal, tax tribunal, Water Tribunal etc. are constituted under different enactments to adjudicate issues arising out of that concerns with the persons qualified to preside over the Tribunals<sup>4</sup>. Thus there is an emerging change in the dispute resolution mechanisms observed in the light of various limitations to present day Judicial Systems in dispensation of justice.

It is also true that the Agency Courts manned by Revenue Officials in tribal areas are not disposing off cases in a speedy manner due to their involvement in multiple activities. Introduction of Judicial Courts system to address this problem is also not an apt solution. The extension of CPC to the Scheduled Area will not protect the interest of the tribals in any way better than the existing legal system. The Government may examine the establishment of Special Tribunals with the trained personnel to adjudicate civil disputes arising in the scheduled areas which will be in tune with the A.P. Agency Rules and also in consonance with the changing trend of Alternative Disputes Resolution mechanism. The Traditional Panchayat System also must be strengthened as an Alternative Dispute Resolution mechanism by invoking the provisions of PESA Act 1996.

**Note: Supreme Court passed an order to continue the existing Agency Courts in the Scheduled Areas. Full details of the case given in this book.**

**(Footnotes)**

1. Parameshwara Veeraju Reddi Vs. State of Andhra Pradesh and others- 2006 (4)ALD p.558
- 2.G.O.Ms No 4 Social Welfare Department dated 6-2-2012
- 3.102 meeting of AP Tribes Advisory Council, dated 18-3-2010 Hyderabad
- 4.Meeting resolution of tribal activists and socially concerned advocates, dated 27-3-2012 at Commissioner of Tribal Welfare office, Govt.AP. Hyderabad.

## **2. Politics of Tribal Land Rights: Notes from Andhra Pradesh**

The Tribal Advisory Council(TAC) constituted under the Fifth Schedule of the Constitution of India, aimed to protect the land rights of tribals residing in the scheduled areas. The law clearly says that the governor of a state may make regulations to provide for peace and good governance of the scheduled areas but not without consulting the TACs. But in the notified scheduled areas of Andhra Pradesh, although the TAC is an independent constitutional body, in reality, it remains subservient to dominant non-tribal political interests. An exploration into the functioning of the TAC between 1976 and 2010.

The question of land tenure has been a pivotal and sensitive political issue in the context of scheduled areas (SAs)<sup>1</sup> of Andhra Pradesh (AP). A total of 35 tribal communities are notified in AP as scheduled tribes (STs) and their population is about 50.24 lakhs, which constitutes 6.59% of the total population of the state as per the 2001 Census.

Agriculture is the main source of income and livelihood for a majority of the tribals. However, large tracts of land in the Fifth Schedule are concentrated in the hands of predominantly elite nontribal sections. Consequently, the tribal people are marginalised and deprived of their traditional land rights. Alien systems of land tenures imposed from outside have far-reaching adverse effects on the dignity of tribals and their access to justice.

Tribals in AP have a long and rich history that includes linkages with natural resources. This unwritten relationship, however, has been altered and even appropriated upon the arrival of nontribal settlers from the non-scheduled plain areas. The introduction of various land-related documents alien to tribals and their territories, and the imposition of alien modes of governance inaugurated a cycle of land occupations by nontribals. The legitimisation of this process by land reforms policy and the law led finally to the dispossession of tribals of control over their land. Their rights were ignored and frequently violated leading to a sense of helplessness. This amounted to nothing less than an assault on their identity. The tribals' access to government wastelands and legalised entitlements have been restricted. Most of the land, which was given to

non-tribals under inalienable freehold title by proprietors of land tenures, attained legitimacy through subsequent State-initiated legal processes of land claims during the survey and settlement.

The historical and legal perspective and underpinning is that land in the SAs belongs to the tribals. Until and unless the contrary is proved, the land in occupation by non-tribals shall be deemed to have come through a transfer from tribals as per the Land Transfer Regulations (LTRs) (Amended) I of 1970. So the burden of proof lies on the non-tribals to legally prove that the land in their possession had been with them even prior to the Andhra Pradesh Agency Tracts Land Transfer Act of 1917, which restricts land transfer between tribals and non-tribals. Although LTRs I of 1970 has been in force, its implementation has been rather poor. Authorities endowed with powers and duties of carrying out proper enquiries as required under the regulations have failed to restore alienated lands to the tribals.

Of the 76,762 cases covering an extent of 3,39,699 acres of land, 74,973 cases covering an extent of 3,32,852 acres were disposed of by the special deputy collectors' courts (SDCs) in AP by the end of January 2010. The courts decided 36,512 cases covering an extent of 1,43,683 acres of land in favour of the tribals. However, the enforcing machinery set up under the regulations could only restore 1,22,011 acres of land pertaining to 30,905 cases out of a total of 36,512. On the other hand, the non-tribals were able to secure orders in their favour in 38,461 cases and retained 1,89,169 acres of land in their possession.

The table (p 68) shows that the success rate for land acquisition is 49% in the case of tribals, and 51% in the case of non-tribals. Tribals were able to regain land possession from non-tribals only to the extent of 43% of the total extent of land, covered by cases disposed of, while the non-tribals could retain 57% of the disputed land. Due to failure of the implementing machinery in diligently carrying out the orders passed by the SDC in favour of the tribals, only 85 of the total cases were disposed of in favour of the tribals, and only 85% of land was physically handed over to them. This clearly shows the failure of the administrative machinery in the execution of orders passed by the court in favour of tribals. This has resulted in non-tribals continuing to possess land even when eviction orders are passed against them.

S L N o .	District	Cases detected		Cases Disposed		Cases Decided in favour of STs		Cases Decided in favour of Non-STs		Land Restored to Tribals		Balance cases at the end of the month (col. 3-5 & 4-6)	
		Nos	Extent (Acres)	Nos	Extent (Acres)	Nos	Extent (Acres)	Nos	Extent (Acres)	Nos	Extent (Acres)	Nos	Extent (Acres)
1.		2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.
1.	Srikakulam	462	1100	453	1024	296	538	157	486	250	522	9	76
2.	Vizianagaram	1364	7344	1343	7501	955	5631	388	1870	850	5498	21	43
3.	Visakhapatnam	5708	22731	5480	22087	4359	17721	1121	4366	3029	13944	228	644
4.	East Godavari	8485	49637	8264	48768	3751	19667	4513	29101	3392	17685	221	869
5.	West Godavari	11611	62121	11477	60820	2584	11082	8893	49738	2451	10081	134	1301
6.	Khammam	33582	126713	33325	125834	15514	52192	17811	73642	12730	41662	257	879
7.	Warangal	7389	15784	7052	15218	4865	8964	2187	6254	4865	8964	237	566
8.	Adilabad	8245	54008	7564	51543	4175	27839	3389	23704	3305	23606	681	2465
9.	Mahabubnagar	16	61	15	57	13	49	2	8	13	49	1	4
	<b>Total:</b>	<b>76762</b>	<b>339699</b>	<b>74973</b>	<b>332852</b>	<b>36512</b>	<b>143683</b>	<b>38461</b>	<b>189169</b>	<b>30905</b>	<b>122011</b>	<b>1789</b>	<b>6847</b>

Source: Office of the Commissioner of Tribal Welfare, Hyderabad, Administration Report (January 2010).

A 1995 report of the Tribal Welfare Department of the Government of Andhra Pradesh puts it succinctly:

Had history been otherwise, nearly 5 lakh tribal families living in the Scheduled villages of Andhra Pradesh would have presently together been the proud owners of 18,48,209.30 acres of land with an average household landholding of 3.69 acres. But instead, presently more than 48% of this land is cultivated by the non-tribals. In some districts as Warangal, Khammam and Adilabad more than 50% of the land in the Scheduled villages is held by the non-tribals. To check the land alienation, several Land Transfer Regulations including 1 of 59 as amended by 1 of 70, were created prohibiting the transfer of land between tribals and non-tribals, and among the non-tribals since 1917. In spite of these restrictions, land alienation is still prevalent amongst the Adivasis (GoAP 1995).

#### **Constitutional Governance in Scheduled Areas**

The Constitution of India enjoins upon the states the obligation to promote the interests of Scheduled Castes (SCs) and STs and to protect them from social injustice and all forms of exploitation. Land and land tenure are placed under the exclusive legislative and administrative jurisdiction of the states. However, the central government has been taking on an advisory and coordinating role in the field of land reforms ever since the First Five-Year Plan. Importantly, for matters related to land within the Fifth Scheduled Areas, special provisions were made under the Constitution.

Article 244 is the most significant article in the Constitution regarding tribal land rights. It states that the traditions and culture of ST communities are to be respected and the SA should function autonomously. The Fifth Schedule allows the President of India to declare SAs and gives the governor of a State the power, by public notification, to not apply Parliament acts or to modify them in accordance with the needs of STs. Crucially, it also permits the governor, on the recommendation of the TAC, to prohibit the transfer of land by or amongst STs as well as to regulate the allotment of land to non-STs and the working of moneylenders.

The Fifth and Sixth Schedules incorporated into the Constitution were specific to STs. The Fifth Schedule designates power to the president of India to declare certain areas as SAs. The SAs (Part 'A' states) Order, 1950 and the SAs (Part 'B' states) Order, 1950 were issued declaring certain areas as SAs in Part A and Part B states, respectively. Part A states refers to the SAs of Andhra region while Part B states refers to Telangana region of Andhra Pradesh state. Through these orders, the provisions of the Fifth Schedule were made applicable to the SAs of Andhra Pradesh. Article 244 of the Constitution states:

**Administration of Scheduled Areas and Tribals Areas.** The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than (the States of Assam, Meghalaya, Tripura and Mizoram). The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram.

Under Clause (5) of the Fifth Schedule, the governor may direct by public notification that any particular Act of Parliament or of the legislature of the state shall not apply to SAs or any part thereof in the State, or shall apply to SA or any part thereof in the State, subject to such exceptions and modifications as the governor may specify in the notification. The governor may make regulations for the peace and good governance of any area in a state, which is presently a SA. In particular such regulations may:

- (i) Prohibit or restrict the transfer of land by or among members of the STs in such area which is notified as SA
- (ii) Regulate the allotment of land to members of the STs in such areas;
- (iii) Regulate the carrying on of business as moneylenders who lend money to members of the STs in such areas.

The President of India shall assent all regulations made under this paragraph before it comes into effect. If there is one TAC for the state, no regulation shall be made under this paragraph unless the governor making the regulation has consulted such a council. Therefore, the governor may make a regulation for the peace and good governance of a SA in a state after consulting the TAC of the state if one already exists.



In exercise of the powers conferred by paragraph 4(3) of the Fifth Schedule to the Constitution and in supersession of all the previous rules on the subject, the governor of AP outlined rules for the constitution of a TAC in the state. These rules are known as the Andhra Pradesh Tribes Advisory Council Rules, 1958. These rules came into effect from 28 January 1958. The TAC consists of 20 members of whom not less than 15 should be representatives of STs in the AP legislative assembly. If the member representatives of STs in the legislative assembly are less than 15, the remaining seats would be filled by other members of these tribes.

The members shall be appointed by the governor by notification in the Andhra Pradesh Gazette. The term of the council shall ordinarily be three years. The minister in charge of the welfare of STs shall be the ex-officio chairman of the council. The TAC shall meet as often as necessary, and in any case, not less than twice every year. The basic objective of the council is to advise the governor on matters pertaining to welfare and advancement of STs.

#### **Role Played by Tribes Advisory Council**

A review of TAC decisions made during the period 1976-2010 would be indicative of its role in constitutional governance in the SAs. In particular, the TAC's role in rendering advice to the government and governor through various decisions throws light on the politics in the region. An analysis reveals that several key decisions taken by the TAC were disregarded under political pressure from both ruling and non-ruling political parties in order to maintain and satisfy their non-tribals' vote bank in the Fifth SAs of the State.

On the practice of some non-tribals keeping tribal women as mistresses so as to grab their land, the TAC "resolved to request the Government (i) not to recognise the second marriage of a non-tribal with a tribal lady and to see that the land of tribals is not enjoyed by the nontribal through such a marriage".<sup>2</sup> However, this resolution has remained unimplemented. It was further resolved that the Andhra Pradesh SAs Land Transfer Regulation, 1959 should be amended to declare the land purchased in the name of tribal women, married or kept as concubine by non-tribal men, as null and void. There is a similar provision in the Orissa Scheduled

Areas Transfer of Immovable Property (by STs) Regulations, 1956.<sup>3</sup> But no amendment is made to the existing LTR 1 of 1970 laws to give effect to this salient recommendation of the TAC.

Yet another threat is the intrusion of relatively more dominant and powerful tribals from plain areas into the SAs and exploiting the land belonging to forest dwelling STs. This has become possible because there is no prohibition of land transfer amongst the STs. This has escalated inter-tribal land conflicts. The TAC accepted the proposal to provide identity cards to the local tribals as there are a large number of cases of migration of non-locals into Andhra Pradesh so as to corner benefits extended to the local STs. This decision was taken based on the proposal of the commissioner, tribal welfare, for banning alienation of land of the Chenchu tribals through an ordinance. This was done in view of their backwardness and the presence of a large number of young widows in the Chenchu project area as their spouses had probably died due to tuberculosis or cirrhosis.<sup>4</sup> In fact, no such mechanism was put in place to check the infiltration of non-locals.

Even where tribals have had cases related to land go in their favour, the aggrieved tribals have been unable to access the land due to delay in execution of the orders issued in their favour by the SDC court. This is despite instructions given by the government to the authorities for effective implementation of court orders through the Circular No 15857/79-C, 2 Revenue, Andhra Pradesh, Hyderabad, followed by another Circular Rc No JI/4206/79, dated 17 October 1979.<sup>5</sup> Moreover, there is no evidence of any action initiated against the erring officials for having disobeyed the decisions of the TAC.

The term "transfer" under LTRs which prohibits tribal land alienation does not include testamentary disposition which means disposal of property through execution of a "will". This provides scope for further tribal land alienation. In this backdrop, the TAC unanimously resolved to remove the term testamentary disposition of property by bringing in an amendment to the provision of Section 2 clause (g) with the word "transfer" under LTRs.<sup>6</sup> However, this decision has not been translated into action.

The TAC had also resolved to approve amendment to the regulations with retrospective effect stating: "in view of the legal complication in implementing the Land Transfer Regulation in Scheduled Areas of Andhra Pradesh, it is desirable that the Andhra Pradesh Land Transfer Regulation 1959 which extended to SAs of Telangana from 1.12.1963 may be amended so as to give retrospective effect from 31 October 1949", the date on which the Notified Tribal Areas Regulation came into force.<sup>7</sup> But except for issuing a statement, no efforts were made to bring the legislation into effect from 31 October 1949 through an amendment to the law.

Regarding rehabilitation of *podu* (slash and burn cultivation) cultivators, members of the TAC requested the concerned Ministry of Environment and Forests, Government of India, for early clearance of the dereservation of an adequate extension of forestland for the purpose of rehabilitation.<sup>8</sup> No steps were taken to dereserve the land. Instead, tribals were evicted from *podu* lands in the SAs of Visakhapatnam district as per the Rehabilitation and Resettlement Action Plan (2002) of the Government of Andhra Pradesh.

Regarding implementation of LTRs 1 of 1970, all members of the TAC unanimously approved the proposal in 1988 recommending amendment to all the regulations and other laws in the SAs to restrict the power of stay of the courts including the high court, and to specifically declare that no stay should be granted against the tribals without hearing both the parties.<sup>9</sup> In fact, nontribals continue to obtain land possession with the support of stay orders obtained from the high court, stalling the implementation of the eviction orders issued against them.

An attempt to water down the LTRs 1 of 1970 was made in 1988 by the government by amending the regulation so as to permit the non-tribals to transfer their land in the SAs to other non tribals by sale. The then chief minister directed the tribal welfare minister to steer the meeting of the TAC and get its endorsement for the amendment. Between December 1987 and March 1988, the TAC was convened four times for this purpose (it usually meets once in a year). In order to secure the ratification of the TAC, which is mandatory under the Fifth Schedule so as to proceed

further in tribal affairs, the government brought about immense pressure on the TAC in the form of a consensus resolution passed by the floor leaders of all political parties convened by the chief minister on 9 April 1988 (Reddy 1988).

On 10 May 2000, the TAC which was convened so as to endorse the proposal to lease land in the SA for mining. However, the TAC refused to concede to this. The chief minister then summoned the minister for tribal welfare and some other members of the TAC and began to persuade them of the benefits that would accrue if land in the SAs was leased out to a Dubai-based corporation for setting up an aluminium factory. Then a second meeting of the TAC was convened on 24 May 2000, where a majority of the members were finally bulldozed into toeing the government directive. However, a sustained campaign by several tribal rights bodies, human rights organisations and non-governmental organisations invoking protective legislation for adivasis put paid to the government's malafide moves (Reddy 2006).

On the issue of possession certificates to non-tribals, the TAC decided on 12 July 1999 on the resolution already passed on 9 May 1998, approving non-tribals to construct houses in the SAs.<sup>10</sup> This paved the way for issuing of a government order – GOMs No 2 Social Welfare Department dated 1 July 2000 – approving the Andhra Pradesh State Housing Corporation as a financial institution for the purpose of advancing loans to eligible non-tribals in SAs on mortgage of superstructure as security towards loans.<sup>11</sup> However, this decision was challenged by a tribal, Tellam Venkata Rao and others before the High Court of Andhra Pradesh as it goes against the provisions of LTRs 1 of 1970 in Writ Petition No 3373/2000. The high court struck down the contentious substance of the government order. However, the unsuccessful non-tribals filed a Special Leave Petition (SLP) No 28423 of 2011 in the Supreme Court of India. This is pending for consideration.

A majority of the members, 10 of 12, of the TAC supported an amendment to the LTRs 1 of 1970, that enables the state government to acquire or grant any interest in the land including sub-soil rights for reconnaissance permit or prospecting licence or mining lease for major minerals, to any

person or organisation, whether or not under the control of state or central government as suggested by the advocate general of India.<sup>12</sup> However, the government could not bring about the amendment due to strong opposition from tribal organisations.

The TAC, therefore, continues to remain subservient to powerful nontribal interests. Even when pro-tribal progressive decisions are taken by it, there is woeful lack of implementation. Non-implementation of constitutional guarantees for the tribals continues to this day.

#### Notes

1. Areas of Srikakulam, Vizianagaram, Visakhapatnam, East and West Godavari, Khammam, Warangal and Adilabad districts were notified by the President of India under Fifth Schedule to the Constitution of India.
2. Minutes of Andhra Pradesh Tribes Advisory Council (37th) meeting held on 5 February 1977, Hyderabad.
3. Minutes of the Andhra Pradesh Tribes Advisory Council Meeting held on 17 November 1995, Hyderabad.
4. Minutes of the APTAC Meeting held on 14 February 1994 at Telugu Samkshema Bhavanam, AP, Hyderabad
5. Review of Action Taken on the minutes of the meetings of the APTAC (1979-80), Hyderabad.
6. Minutes of TAC 102nd meeting held on 18 March 2010, Hyderabad.
7. Minutes of the 46th meeting of APTAC held on 30 April 1982, Hyderabad.
8. Minutes of the AP TAC 52nd meeting held on 28 November 1986, Hyderabad.
9. Minutes of the APTAC held on 23 December 1988, Hyderabad.
10. Minutes of the Andhra Pradesh Tribes Advisory Council meeting held on 26 June 1999, Hyderabad.
11. Minutes of the Andhra Pradesh Tribes Advisory Council meeting held on 12 April 2000, Hyderabad.
12. Minutes of the meeting of the TAC held on 24 May 2000, Hyderabad.

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### 3. Denial of Tribal Land Justice

A brief overview of the legislations affecting ownership and management of land in Schedule areas is essential to appreciate the pattern of growing problem or the continued struggle for tribal rights. It is important to have a critical assessment of the laws affecting land in agency areas in historical perspective demarcating the major concerns and issues.

#### Historical Evolution of Land Laws in Fifth Scheduled Area

##### a) Pre independence period

The land alienation as a pressing problem was first recognized during the British rule in India when the Schedule Districts Act XIV, 1874 was passed aiming to protect the tribals from the danger of further land (legal land holding) alienation and indebtedness. Exercising the power under Section 6 of the Scheduled Districts Act, 1874, local Government issued rules for the administration of the Agency Tracts and for regulation of the procedure of the Officers so appointed to administer them. Subsequently, the Agency Tracts Interest and Land Transfer Act 1917 (Act 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 in Ganjam, Vizagapatnam and Godavari Districts. By a subsequent notification, the Act was extended to the taluk of Bhadrachalam in East Godavari District.

Under Section 2 of said Act, Agency Tracts are defined as meaning Scheduled Districts as defined in the Acts XIV and XV of 1874. Therefore, Scheduled Districts within the meaning of Scheduled Districts Act XIV of 1874 were treated as Agency Tracts by virtue of Section 2(a) of Act 1 of 1917. The object of Act 1 of 1917 is to limit the rate of interest and also to check the transfer of lands in the Agency Tracts. Yet, the land legislation was seldom implemented and prove effective. In similar to the position of tribals in British presidency, the tribals in Telangana Districts of Nizam rule in the State of Hyderabad suffered at the hands of land grabbers, landlords, unscrupulous traders, and money lenders. Imposing heavy taxes on tribals and forcing them to retreat deep into the forest may be another reason<sup>1</sup>.

In comparatively recent times also in Adilabad district the tribals rebelled in 1940 under the leadership of Tribal Komram Bhim as a result of alienation of tribal land and forest reservation rules. The non-tribal settlers managed to obtain title deeds for the occupied lands which once belonged to tribals. Large chunk of lands which had been cultivated on Sivai Jamabandhi tenure (Govt. land encroachments) was lying fallow at the time of demarcation was included in the Reserve. The struggle was ultimately resulted to promulgation of law known as 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 relation with non-tribals. The substance of this regulation was incorporated in the Tribal Areas Regulation 1359 Fasli (1949 A.D). The most important provision of this Regulation is 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 site 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 an areas as a Notified Tribal Area.

##### b) Post Independence period

After the advent of the Constitution of India the provisions of the Fifth Schedule to the Constitution were made applicable to the Scheduled areas of Andhra Pradesh. The Article 244 provides that for administration and control of the scheduled areas in any State. The Governor may make regulations for the peace and good government after consulting the Tribes Advisory Council of the State if one is existing. He is also empowered to make regulations prohibiting or restricting transfer of land and by or among the members of the scheduled tribes in such area; regulate the allotment of land to members of the Scheduled Tribes in such area. Such regulation will have effect when the President has assented to the same.

Exercising the above power conferred by para (5) of Fifth Schedule, the Governor issued the A.P Scheduled Area Land Transfer Regulation,

1959 (Regulation 1 of 1959) which came into force on 4-3-1959 partially repealing the earlier Agency Tracts Land Transfer Act 1917. The Tribal Area Regulation 1359 Fasli (1949AD) in the Telangana districts was repealed in 1963 and replaced by A.P. Scheduled Area Land Transfer Regulations 1 of 59 which came in to force on 1.12.63. The regulation says that notwithstanding anything contained in any enactment, rule or law in force in the Agency Tracts, any transfer of immovable property situated in the Agency Tracts by a member of a Scheduled Tribe, shall be absolutely null and void unless made”

- i) in favour of any other member of a Scheduled Tribe or a registered society as defined in clause (f) of Section 2 of the Madras Co-operative Societies Act, 1932 (Madras Act VL of 1932), composed solely of members of the Scheduled Tribes, or
- ii) with the previous sanction of the State Government, or subject to rules made in this behalf, with the previous consent in writing of the Agent or of any prescribed officer.

Although the protective Land Transfer Regulations had been in force, it was observed by several committees that the non-tribals were able to find ways and means to circumvent the provisions of Land Transfer Regulation 1 of 1959 by entering into benami transactions and other clandestine transactions with unsophisticated tribals. As there was no check on transfer of lands between non tribal settlers and other non tribals, several transactions in relation to the immovable property situated in the scheduled areas were effected. As a result non tribal migration to scheduled areas had increased and invited further tribal land alienation by new migrants through recorded or un recorded clandestine transactions. The excessive exploitative conditions induced by external interventions, the ineffectiveness of the Government response in prevention Tribal land alienation and restoration of alienated tribal lands and the ineffective legislations triggered the Naxalite movement in Srikakulam region from 1968-70.

It is only with a view to maintain peace and to govern the area effectively Regulation 1 of 1970 was passed by the Governor. The basic purpose

was to ensure that the land of the tribals should not be frittered away to outsiders by transfer and that non-tribals should not be allowed to infiltrate into scheduled areas by getting allotments of land made in their favor. The Regulations 1 of 70 say that until the contrary is proved, any immovable property situated in the Agency tracts and in the possession of a person who is not a member of Scheduled Tribe, shall be presumed to have been acquired by such person or his predecessor in possession through a transfer made to him by a member of a Scheduled Tribe.

#### **Outcome of the Tribal Protective land laws**

The outcome of legal process at Special Deputy Collector's court level in the State is a glaring example of denial of justice to tribals although tribal protective land transfer regulations 1 of 70 have been in force for retrieval of alienated lands.

Out of 76762 cases covering an extent of 339699 Acres of land, 74973 cases covering an extent of 332852, were disposed off by the SDC Courts in the State of Andhra Pradesh. The courts decided 36512 cases covering an extent of 143683 Acres of land in favor of tribals. However, the enforcing machinery set up under the Regulations only could able restore the land of 122011 Acres pertaining to the 30905 cases out of 36512. On contrary the non tribals parties could able to secure orders in their favor in 38461 cases and retained the land of 189169 acres of in their possession.

The table shows that the success rate is 49 percent in the case of tribals, 51 percent in the case of non tribals. Tribals could able to regain the possession of lands from non tribals only to the extent of 43 percent of the total extent of land covered by cases disposed off, while the Non tribal could retain the remaining 57 percent of the disputed land. Due to failure of implementing machinery in implementing the orders passed by the SDC court in favor of Tribals, only 85 percent of total cases disposed off in favor of tribals covering an extent of 85 percent of land was only handed physically to them. This shows the failure on the part of administrative machinery in execution of the orders passed by the court in favor of tribals. This resulted in to continuation of non tribals in the lands even eviction orders were passed against them.

The legal system in Scheduled Areas is ostensibly designed to facilitate the passage of justice in tribal-dominated societies. In this cause, legal protections for tribals have been formulated in the interest of their survival and livelihood. But, as K. Balagopal has pointed out,

it is not enough if a disadvantaged class of people are endowed with legal rights. Legal instruments created for the benefit of the socially privileged can be expected to find their way to implementation without anything else. This is not the case with legal rights enacted for the benefit of the disadvantaged.<sup>2</sup>

The alien legal system imposed by British impinges on the customary land rights of adivasis. Customary law traditionally settled tribal disputes until English common law became the sole legitimate recourse for enforcing rights. Predictably, the usual difficulties with any *imposed* law—prolonged procedures, impractical rules of evidence, and delays in disposal of cases—hinder a verdict even in the simplest of cases. But tribals give more value to the verbal evidence rather documentary. However Evidence Act gives more weightage to documentary evidence which is well known to the Non tribal parties in the land matters and managed to document the land records which are in their favor to get advantage during the court enquiries. Indigenous communities therefore prefer the swift justice delivered by extremists (such as the Naxalites and Maoists) flourishing in the hinterlands over the procrastinated conventional court system to which they are unaccustomed. They thus become ready recruits for extremist groups like the Maoists in central and south India who promise protection of the tribes' natural rights in return for material and political support.<sup>3</sup>

#### Judicial interventions in land justice at Higher level

The scope of the meaning of word 'Transfer' under Land Transfer Regulation 1 of 59 as amended by 1 of 70 is expanded to provide legal justice to tribals for retrieval of lands lost to non tribals through interpretations by the High Court of Andhra Pradesh as well as Supreme Court. The word transfer is included the acts of "forcible dispossession and encroachment of tribal lands by outsiders". So a dispossessed tribal is entitled to restoration of possession of his land<sup>4</sup>. The word "Other

dealing" in the definition of the word Transfer under Land Transfer Regulations also embraces, allotment of shops in Bus stands in Agency Areas by means of tenders in the form of licence. The word 'licence' can be read under the general expression 'other dealings' used in Section 2(g) of the Regulation. Hence even permitting non tribal commercial establishments by the State is also banned under the Regulation.<sup>5</sup> The supreme Court while dealing a case under "Orissa Scheduled Areas Transfer of immovable Property (By Scheduled Tribes) Regulation (2 of 1956) held that 'Transfer of immovable property' by ST – Expression 'transfer' – includes any 'dealing' with such property – Word 'deal with' not defined in Statute – Dictionary meaning if taken as safe guide can be extended to achieve legislative object of Act – Transaction or dealing with immovable property having effect of extinguishing title of member of aboriginal tribe – and vesting same in non-tribal – Is construed as 'transfer of immovable property'.<sup>6</sup>

Further the word 'Exchange' in the definition of 'transfer' also includes exchange of shared immovable properties among family members in Fifth Scheduled Areas. Partition of family properties is permitted but not exchange of properties during the partition of inherited family properties by non tribals.<sup>7</sup> The High Court of AP further held that the word "Transfer" includes "contract to sell".<sup>8</sup> To make available the Government lands for tribals cultivation, the High Court of A.P further expanded the definition holding that even if land classified as Gayalu/ Government poramboke, person who is in possession of such land must be said to be dealing with such immovable property. Therefore same falls within scope of "Transfer" as defined under Section 2(g) of the Regulation.<sup>9</sup>

The Supreme Court held that the word 'person' in S.3(1) of the Land Transfer Regulations would also include both natural persons as well as juristic person, and Constitutional Government. Therefore transfer of land by juristic persons or allotment of land by State to non tribals, stands prohibited. This ruling restricts the Power of Govt. to grant leases to non tribals in agency areas for mining or any other purposes. Constitution of India, Art.21 guarantees "Right to life". Right to life means something more than mere survival of animal existence. Thus tribals have fundamental right to social and economic empowerment.<sup>10</sup>

The laws made applicable to the scheduled areas indicate an anxiety to safeguard the interest of the tribals in the scheduled areas and to see that the land in the scheduled areas should be in possession of tribals only. The High Court of Andhra Pradesh held that the object seems to be that all the immovable properties in Agency Tracts, as far as possible, must be restored back to the tribals, which was held by tribals at one time. Therefore a non tribal transferor after the commencement of Land Transfer Regulations 1 of 70 can not seek restoration of the alienated land to another non tribal nor the non tribal transferee can claim for retention of the land.<sup>11</sup>

#### **Land Transfer Regulation prevails over other laws:**

Governments time to time issued several Government Orders protecting the landed interest of non tribals due to political pressures. However the High court of Andhra Pradesh came to the rescue of tribals in protecting their interest observing that such GOs are illegal and without jurisdiction.<sup>12</sup> Similarly in another similar case, High court held that the GOs 41 and GO Ms 951 in 74 prohibiting eviction of non-tribal Sivai Zamadars in occupation of Government lands in Scheduled areas are against the provisions of tribal protective Land Transfer Regulations 1 of 70.<sup>13</sup>

The High Court of AP even held that the lands situated in the scheduled areas cannot be acquired under Land Acquisition Act for providing house-sites even to Scheduled Castes *de hors* the Regulation.<sup>14</sup>

The constitutional importance of the Land Transfer Regulation as amended by Regulation 1 of 1970 underlined by the High Court of AP observing that the Regulations 1 of 70 prevails over the provisions of Regulation 2 of 1970 Ryotwari Settlement Regulations and no Ryotwari patta can be granted in violation of the provisions of regulation 1 of 1970 – Such a patta would not bind the Authorities under Regulation 1 of 1970.<sup>15</sup>

The main purpose of A.P. Scheduled area Land Transfer Regulations 1 of 59 is to invalidate any transfer of lands situated in agency tracts in favour of non-tribal. Where the Regulation 1 of 59 decides that possession and occupation of the non tribal is void that would prevail against any

ryotwari patta that might have been granted under Regulation II 1970. Therefore any decision made under Regulation II of 1970 can only be **tentative** and **provisional** and would be subject to the decision under Regulation 1 of 59.<sup>16</sup>

The prohibition against transfer and the declaration of nullity enjoined under Amended Land Transfer Regulation having been held to be an emanation of Para 5(2) of the Fifth Schedule to the Constitution itself, the determination of invalidity declared under the provisions of Land Transfer Regulations will have to be held as overriding any contrary determination under any other Regulation.<sup>17</sup>

#### **Applicability of principle of Resjudicata**

Even the High Court of AP is not inclined to apply the Principle of Resjudicata to the tribal land alienation cases under the Regulations, but given a restrictive frame for its application. It is held that orders passed in the first proceedings initiated under the Regulation will not operate as Resjudicata if the later proceedings were initiated by third party or by the same party on the basis of any further material.<sup>18</sup> Further held that held, the earlier proceedings do not operate as Resjudicate in the present proceedings if the question involved in the earlier proceedings is distinct and different from the one on the basis of which the present proceedings are initiated.<sup>19</sup>

Mere fact that on the earlier occasion a petition filed under Land Transfer Regulation 1959, was dismissed does not confer any right on the non tribal so long as the Statutory order subsists, Viz. the void sale subsists. The Statute prescribes that any transaction entered into between a tribal and non tribal or between non tribal and a non tribal, they are void *per se*.<sup>20</sup>

#### **Tribal land Justice is deprived**

However, judicial activism has put an obstacle to the very objective of Land Transfer Regulations. The Supreme Court of India held that the Andhra Pradesh Scheduled areas Land Transfer regulation (1 of 1959), Sec. 3 (as it stood before and after amendment in 1963 and 1970), prohibition to transfer of immovable properties in scheduled area operates

prospectively. This means the Regulations do not adversely affect completed transactions of transfer which have taken place prior to enforcement of Regulations.<sup>21</sup>

Dealing with a Tribal Land question situated in Telangana area, the High Court applied the same principle and held that authorities acting under the said Regulation cannot interfere with the alienations effected prior to the commencement of the Regulation 1/1970. If the said transactions are illegal in view of any other provisions of law, it is for the appropriate Forum to take action but they cannot be declared void by Deputy Collector acting under Section 3 of Regulation 1/1970. The court held that the authorities under Regulation while admitting the transfer to be prior to 1-12-1963 cannot set aside the same on the ground that it was by an unregistered sale deed and therefore not valid. There is no jurisdiction or power conferred on authority to question the validity of alienation otherwise than being in contravention of the regulation.<sup>22</sup> Therefore these rulings give a wider scope to non tribals to escape from the clutches of tribal protective land laws, and manipulation of anti dated unregistered agreements and sale deeds.

The ruling of AP High Court further weakened the unwilling State in enforcing the Land Transfer Regulations. The Regulations have provided suo moto power to initiate proceedings against non tribal occupants in the scheduled areas. However the ruling of the Court has limited its power affecting the tribal land rights. The High court of A.P held that exercising a suo motu power after a lapse of reasonable time would be arbitrary and contrary to the principle of 'Rule of Law' enshrined in the Constitution and exercising such a suo motu power after 14 or 15 years would be ipso facto unreasonable.<sup>23</sup>

However the courts in other cases have taken an adverse stand to the decision of the Supreme Court in P. Ramireddy Vs. State of Andhra Pradesh which stands for tribal land justice. The Supreme Court was pleased to hold that the legislation which in essence and substance aims at restoration to the 'tribals' of the lands which originally belonged to the 'tribals' but which passed into the hands of 'non-tribals' in the aforesaid background certainly cannot be characterized as unreasonable. True,

transfer by 'non-tribals' to 'non-tribals' would not diminish the pool. As a mater of fact it would be unjust, unfair and highly unreasonable merely to freeze the situation instead of reversing the injustice and restoring the status-quo-ante.<sup>24</sup>

Therefore the decisions of A.P.High court in Kola Mahalakshmi case stands as legal hurdle for the efforts of either State or individual tribals in seeking land justice for the tribals.

### Conclusions

Justice must be seen in a broader perspective without confining to the fixed lens of legal frame work particularly in the context of prevalence of in equal societies. There is a continued conflict between customary laws of tribals and codified law in dispensation of justice. The Legal Institutions give priority to codified law which never recognized the customary law of tribals governing natural resources. The State is expecting justice in the given frame work of legal institutions which are not apt to deal the land alienation problem of tribals. Tribals seek simple form of justice without any elaborate legal procedure and giving any scope for weighting the justice based on land records which are invariably in favor of non tribals. As rightly observed by the Supreme Court in P.Ramireddy case that the community can not shut its eyes to the fact that the competition between the tribals and non tribals partakes the character of the race between a handicapped one legged person and an able two legged person. It would be unfair to the State to continue the race using the present legal frame work in rendering justice to tribals. Therefore the present alien legal system is not an appropriate forum for administration of justice and an alternative dispute resolution mechanism must be put in place to deliver the land justice to tribals by amending the laws to suit the factual context.

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### (Footnotes)

- 1 .Tribes of India – Haimendorf, 1943
- 2 .K.Balagopal in his foreword to P. Trinadha Rao, op.cit., p.i)
- 3 .See "A Specter Haunting India" The Economist (17 August 2006), online: <[http://www.economist.com/world/asia/displastyory.cfm?story\\_id=7799247](http://www.economist.com/world/asia/displastyory.cfm?story_id=7799247)>.



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5. Adarsha Adivasi Mahila Samithi & others Vs. Agent to the Govt. Khammam & others. 2003 (5) ALD 284.
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8. (Kakarla Nageswara Rao and other Vs. Govt. of A.P. rep by its secretary (Tribal Welfare) Dept. Hyderabad.1995 (3) ALT 164)
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10. Samata Appellants Vs. State of Andhra Pradesh & others with Ms. Hyderabad Abrasives & Minerals (P) Ltd. (appellant) & State of Andhra Pradesh & other, Respondents. A.I.R. 1997 Supreme Court 3297.
11. Vemana Somalamma & another (Appl), Veera Sunkar Deo & another (pet) Vs. Deputy Collector(TW), Rampachodavaram, E.G.Dist,1993(1) ALT 409 (F.B)
- 12 . A.P. Girijan Welfare Students and Youth Union Vs. State of A.P. W.P.No 1755/90 dated 5.12.1984
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14. Koppula Saramma Vs. Govt. of A.P. Social Welfare Dept.& others.2001 (3) ALT 501.
15. Gadde Nagabushanamma Vs. Govt. of AP & others. 1999(5) ALD 430.
16. Kandula Brahmaiah Vs. The Deputy Collector (Tribal Welfare) Rampachodavaram, E.G. Dist. W.P. 2169/1981 Dated 10-12-1986-un reported.
17. Samatha Vs. State of AP AIR 1997 SC 3297.
18. (N. Durga Rao & another Vs. Special Deputy Collector (TW) Kota Ramachandrapuram W.G. Dist. & others. 2003(6) ALD (NOC) 68)
19. (Special Deputy Collector (TW), Rampachodavaram, E.G. District & others Vs. Datla Venkapathi Raju & others. 2003 (1) ALD 386

- (D.B)) Similar view was taken by the court in G.Nageswararao @ China Nageswararao Vs. Government of A.P. and others.) 2007 (6) ALD 621)
20. Ch.Satyanarayana Vs. The Agent to Govt. & Dist.Collector Visakhapatnam. W.P. 6065/1979 -unreported.
  21. Deputy Collector Vs. Venkata Ramanaiah another-A.I.R. 1996 S.C. 224.
  - 22 . K. Mahalaxmi & another Vs. Government of Andhra Pradesh & others. 2000 (5) ALD 588
  23. Kola Mahalaxmi Vs. Agent to Government , Khammam & Others. 1999(6) ALD 718)
  24. P.Rami Reddy & others Vs. State of A.P. & Another. (1988) 22 Reports (SC) 364.

#### 4. Right to inherited property for Adivasi women denied

Tribal women are denied their right to share in the inherited property on par with men in the tribal societies. The question regarding tribal women's right to land in the tribal patrilineal system has acquired an enormous significance. It is indisputable fact that the tribal women are not absolutely subordinated and possess greater economic independence and freedom of movement than their counterparts of non tribal societies. However all the personal matters of tribal societies are governed by un codified customary law, under which among patrilineal tribes women's rights are severely circumscribed and limited to usufruct only. The contemporary laws which are recognizing the right to share in the inherited property for a woman of non tribal societies are debarred from its application to Scheduled Tribes.

The majority judges of the Supreme Court bench also could not come to the rescue of tribal women, and held in Madhu Kishwar case<sup>25</sup> that **"it is not desirable to declare customs of tribal inhabitants as offending Articles 14, 15 and 21 of the Constitution and each case must be examined when full facts are placed before the court"**.

The Hindu Women's Right to property Act 1939 which conferred a right on the widow of a coparcener having interest in the joint family property to have the same share as a son would have interest in the interest of the coparcener of a joint family, but such a share of the widow is only limited to her life and thereafter it reverted back to the other coparcener by survivorship. Thus the operation of survivorship as kept in absence or suspended animation during the life time of the widow.

The subsequent Hindu Succession Act governs and prescribes rules of succession applicable to a large majority of Hindus, Sikhs, Buddhists, Jains etc. where under since 1956, if not earlier, the female heir is put at par with a male heir. Next, in the line of Hindu members is the Shariat Law, applicable to Muslims, where under the female heir has an unequal share in the inheritance, by a large half of what a male gets. While the Indian Succession Act which applies to Christians and by and large to people not covered under the aforesaid to two laws, conferring in a certain manner of heir ship on females as males.

After the advent of the Hindu Succession Act 1956 the operation of survivorship stood frozen and frustrated under sections if a male member having interest in the coparcener, dies leaving behind him, any female relative specified female relative. The interest of the coparcener in such an event devolves on such female relatives etc. by succession, testamentary or interstate as the case may be. The female relative etc., specified in class I heir of the Act are daughters, widow, mother, daughter of a predeceased son, daughter of a predeceased daughter, daughter of a predeceased son of a predeceased son, widow of a predeceased son of a predeceased son.

The Hindu Succession Act regulates succession of agricultural land and the word "property" in Section 6 of 8, 14 and 15 and other sections in that Act would include agricultural land.

The Object and purpose of Section 6 of the Hindu Succession Act is an abrogation of the institution of survivorship, though not altogether as an incident of Joint Family sustain for the same reason that there would not be a family without women.

The Hindu Succession Act revolutionized the status of a Hindu female and used Section 14(1) as a tool to undo past injustice in elevate her to equal status with dignity of person on par with man and removed all fetters of Hindu woman's limited estate which blossomed into full ownership. By legislative fiat the discrimination in intestate succession meted out to woman was done away with.

Articles 14, 15 and 16 frowns upon discrimination on any ground and enjoin the State to make special provisions in favour of the woman to remedy past injustice and to advance their socio-economic and political status. Economic necessity is not a sanctuary to abuse woman's person. Section 14, therefore, gives to every Hindu woman full ownership of the property irrespective of the time when the acquisition was made, namely, whether it was before or after the Act had come into force, provided, she was in possession of the property.

The Hindu Succession Act was amended by AP State Act 13 of 1986 called as Hindu Succession (AP Amendment) Act, 1986 and Section 29-A conferring Coparcener rights on the un-married daughters as introduced

if no partition has taken place as on the date of amendment. This amendment came into force on 5-9-1985.

#### **Bar in applicability to Tribes**

Section 2(2) of the Hindu Succession Act, similar to Hindu Marriage Act, Hindu Adoption and Maintenance Act, excludes applicability of customs to the Scheduled Tribes as defined by Clause (25) of Article 366 of the Constitution unless the Central Government, by notification in official Gazette otherwise directs. Explanation 11 to Article 25 does not include them as Hindus.

Thus neither the Hindu Succession Act, the Indian Succession Act, nor even the Shariat Law is applicable to the custom governed tribals. And custom, as is well recognized, varies from people to people and region to region.

#### **Constitutional perspective**

Scheduled tribe people are as much citizens as others and they are entitled to the benefit of guarantees of the Constitution. It may be that the law can provide reasonable regulation in the matter of succession to property with a view to maintaining cohesiveness in regard to Scheduled Tribes and their properties. But exclusion from inheritance would not be appropriate.

By operation of Article 13(3)(a) of the Constitutional law includes custom or usage having the force of law. Article 13(1) declares that the pre-constitutional laws, so far as they are inconsistent with the fundamental rights shall, to the extent of such inconsistency, be void. The object, thereby, is to secure paramountcy to the constitution and give primacy to fundamental rights. Article 14 ensures equality of law and prohibits invidious discrimination. Arbitrariness or arbitrary exclusion are sworn enemies to equality. Article 15(1) prohibits gender discrimination.

Article 15(3) lifts that rigour and permits the State to positively discriminate in favour of women to make special provision, to ameliorate their social, economic and political justice and accords them parity. Article 38 enjoins the State to promote the welfare of the people (obviously men and women alike) by securing social order in which justice, - social, economic and political — shall inform of all the institutions of national life. Article 39(a) and (b) enjoin that the State policy should be to secure

that men and women equally have the right to an adequate means of livelihood and the ownership and control of the material resources of the community are so distributed as best to sub serve the common good. Article 38(2) enjoins the State to minimize the inequalities in income and to endeavor to eliminate inequalities in status, facilities and opportunities not only among individuals but also amongst groups of people.

Article 46 accords special protection and enjoins the State to promote with special care the **economic** and educational interests of the Scheduled Castes and **Scheduled Tribes** and other weaker sections and to protect them from social injustice and all forms of exploitation. The Preamble of the Constitution charters out the ship of the State to secure social, economic and political justice and equality of opportunity and of status and dignity of person to every one.

#### **International Laws**

All forms of discrimination on grounds of gender is violative of fundamental freedoms and human rights. Vienna Convention on the elimination of all forms of Discrimination Against Women (for Short "CEDAW") was ratified by the UNO on December 18, 1979. The Government of India who was an active participant to CEDAW ratified it on June 19, 1993 and acceded to CEDAW on August 8, 1993 with reservation on Articles 5(e), 16(1), 16(2) and 29 thereof. The Preamble of CEDAW reiterates that discrimination against women, violates the principles of equality of rights and respect for human dignity; is an obstacle to the participation on equal terms with men in the political, social, economic and cultural life of their country; hampers the growth of the personality from society and family and makes it more difficult for the full development of potentialities of women in the service of their countries and of humanity. Poverty of women is a handicap. Establishment of new international economic order based on equality and justice will contribute significantly towards the promotion of equality between men and women etc.

#### **Restrictions may be imposed in land transfers**

Thus tribal women are discriminated only on the ground of sex in the matter of intestate succession to the estate of the parent or husband. In the context of tribal land alienation problem in the Fifth Scheduled Areas of the State there is also a need to protect the tribal lands from alienation

to non tribals. The argument of traditional tribal elders is that if tribal women are given right to inherited property there will be every possibility to non tribal migrants gain access to land through developing social relations with innocent tribal women. However, this argument is not just because in the name of tribal land alienation tribal women can not be deprived of their right to property and securing land rights.

Therefore a law is to be brought out with pre requisite conditions that right to alienation of land by a tribal women to other shall be subjected to the relevant provisions of A.P. Scheduled Area Land Transfer Regulations 1 of 70 which prohibits transfer of lands not only between tribals and non tribals but also between the non tribals in the Scheduled Areas. Further amendments could also be required suiting the interest of tribals at large in the case of a tribal woman marries a non tribal person, that Tribal woman should first offer the land for sale to the brothers or sisters in their absence to any male or female lineal descendent of the family and the sale will be in terms of mutually agreed consideration and other terms etc. If no tribal comes forward to take the land from her then she can surrender that land to the Government on payment of compensation. Then the Government can take over that land and assign the same to the eligible tribals in that village. And in no case succession of property to a non tribal husband shall be permitted to devolve if a tribal woman dies intestate. Because the lands situated in the Scheduled Areas are once belonged to tribals and a legal presumption also encapsulated in the Land Transfer Regulations 1 of 70 it self. This principle may also be made applicable to tribal men also if he marries a non tribal woman.

As rightly viewed by the Hon'ble Justice Ramaswamy in Madhu Kishwar case though a minority view, "the provisions of Hindu Succession Act 1956, and the Indian Succession Act 1925 though in terms would not apply to ST, the general principles contained there in being consistent with justice, equity, fairness, justness and good conscience would apply to them". Thus a comprehensive legislation is essential to bring out under Fifth Schedule to the Constitution in order to reverse the historical injustice being done to tribal women in claiming her share in the inherited property.

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(Foot notes)

1. Madhu Kishwar and others Vs. State of Bihar. AIR 1996 Supreme Court 1864

## Glossary of Local and Legal Terms

Adangal	A revenue account which shows cultivation and pattadar details of land.
Adivasi	Original inhabitants/ Aboriginal, member of Scheduled Tribe
Agency areas	Areas are governed by Agent to Government. They refer to the areas governed by the Agents to the Government during the British period for administration of both civil and criminal justice. The revenue officials are designed as Agent, Asst. Agent and Agency Munsif. The Scheduled Areas are also popularly called as Agency Areas.
Agency Divisional Officer	An officer in charge of a Revenue division.
Agency Munsif Agent to Govt.	An officer in charge of a Taluk Government official of the rank of District Collector is designated as Agent to Government, during the British period under A.P. Agency Rules 1924 for administration of civil justice in agency areas.
Amarakam accounts	Records show land given by the Zamindar/ Mukasadar to the Cultivator
Assigned or D form patta lands	Lands which are assigned by the revenue officials to the land less eligible persons for enjoyment of Government lands.
Asst. Agent to Govt.	A sub ordinate officer to the Agent to Government. The official rank of Revenue Divisional officer/ Sub collector are designated as Asst. Agent to Government for administration of civil justice.
Banjara lands	Government Waste lands.
D form Patta	Land title issued by the Government on assigned lands.
Deshmukh	District revenue official
De hors	Outside or beyond the bounds of

Diwan	Supervisory staff of a land lord's estate or jagir
Encroachment	Encroachment means the unauthorized occupation of Government land.
Fair Adangal	A settlement register
Fasali	The revenue year commencing from the first of July to the end of June the following year.
Fifth schedule	Fifth Schedule of the Constitution of India pertains to the governance of Scheduled Areas.
Hill tribe	Anybody or class of persons resident in the Agency Tracts.
Izara dar	A lease holder or farmer of land held at a defined rent or revenue
Izara land	A lease or farm land held at a defined rent or revenue
Karnam	Village level revenue official
Kist	Payment of revenue on installment basis.
Kowl	Kowl is the grant of land on certain terms such as free of assessment for specified periods.
Land Tenure system	Arrangement made by the British administration to collect land revenue from the cultivators of the land.
Mahal	Unit of revenue assessment
Mokhasadar	Head of Mukasa villages and tax collector, during the British Period. He used to exercise the power on grant of Sanad.
Muchalika	A written obligation or agreement or cultivators of land agreeing to the rates of assessment imposed by the Land lord or Government.
Mukhasa	Mukasa is a village or land assigned to an individual either rent free or at a low rent, on condition of services.
Mutta	A village or group of villages held by a Muttadar.
Muttadar	A person who holds Mutta under a Sanad granted by the Government subject to payment of a fixed amount of land revenue and who assists the Government in maintaining law and order in the Mutta.

Patta	Land entitlement deed
Pattadar	The Ryotwari proprietor is usually termed as pattadar.
Pasupukunkuma	Gift of properties given by parents to their daughters on the occasion of marriage.
Per se	It self
Plain area	Other than the Scheduled Area.
Podu	Shifting cultivation/Slash and burn cultivation.
Poromboke	Poromboke is a land belonging to Government which is not prima facie available for assignment.
Proprietor	Land lord or Land holder of villages held by Estate, Mutta, Mukasa.
Resjudicata	No court shall try any suit in which the matter between the same parties, litigating under the same title, was already tried and decided by the competent court. The earlier judgement operates as rejudicata in subsequent suit.
Revenue Village	A local area which is designated as a village by the Government in the revenue accounts for the purposes of revenue administration.
Ryot	Cultivators of land
Sanad	An acknowledgement and documentary proof of rights conferred upon by the Government.
Scheduled areas	The Fifth Schedule under Art.244(1) of the Constitution defines "Scheduled areas" as such areas as the President may by order declared to be Scheduled areas after consultation with Governor of that State.
Scheduled Districts	Districts notified by the British under Scheduled Districts Act 1874.
Scheduled Tribe	Any tribe or tribal community or part of or group within any tribe or tribal community and specified as such in relation to the State of A.P notified by President of India under Article 342 of the Constitution of India.

SDC court	Special Deputy Collector (Tribal Welfare) is a designated enquiry officer under Land Transfer Regulations to conduct enquires for restoration of lands from the possession of non tribals in the scheduled areas. The court is manned by SDC.
Settled villages/ Govt. Villages/ Ryotwari	Villages which were surveyed and settled during the British period in the year 1902-1905 and 1932-35 Ryotwari tenure means the lands which were not covered by Amindari, Muttadari, Mokasadari, etc.
Settlement Patta	Land title issued by the Settlement Officer under Survey and Settlement Regulations under 2 of 69; 2 of 70 etc.
Shikmidar	Shareholder of landed property.
Shivajama occupation	Un authorized occupation (encroachment) of government lands.
Status quo ante	State of affairs that existed previously.
Suomoto cases	Cases identified and taken by the Government on its own initiative.
Survey	Includes all operations incidental to the determination, measurement and record of a boundary and includes re survey.
Survey Number	Land numbered by the Survey and Settlement department of the Government.
Suomoto	On its own motion
Taluk	Geographical revenue unit
Tenant	A person who holds on lease, land belonging to another.
Tribal	Notified as Scheduled Tribes under the Constitution of India
UnAssessed Waste land	Un Assessed Waste Land is a land to which no classification and assessment have been assigned. It is one of the items of land that are prima-facie available for assignment
Zamindar	Land lord/Land owner
Zamindari	Estate owned by Zamindar

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24. Abhivrudhi lo Adivaseelu - Bulliten - 2
25. Status of Adivasis/ Indigenous Peoples Land Series-7
26. Implementation of Tribal Sub Plan strategies - Impact on livelihoods of Tribals in Andhra Pradesh.
27. Land Rights of Adivasis in Telangana & Andhra Pradesh
28. Adivasis Struggle for Identity & Survival
29. Policy and performance of Forest Rights Act 2006 in A.P.
30. Policy and Performance of Forest Rights Act 2006 in Telangana.