STATE OF KERALA AND ANOTHER
v.
PEOPLES UNION FOR CIVIL LIBERTIES, KERALA STATE UNIT AND OTHERS
(Civil Appeal Nos. 104-105 of 2001)

JULY 21, 2009

[S.B. SINHA AND DR. MUKUNDAKAM SHARMA, JJ.]

The Judgment of the Court was delivered by

S.B. SINHA, J.

ISSUE

1. Effect of a writ of or in the nature of mandamus issued by a High Court directing implementation of an enactment vis-à-vis a subsequent legislation altering or modifying the right of the beneficiaries under the former Act, inter alia, is the question involved in these appeals.

They arise out of a judgment and order dated 24th August, 2000 passed by a Division Bench of the High Court of Kerala at Ernakulam.

BACKGROUND FACTS

2. The State of Kerala enacted the Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975 (Act No.31 of 1975) (for short 'the 1975 Act') with the object of providing restriction on transfer of land by Members of Scheduled Tribes in the State of Kerala and for restoration of possession of lands alienated by such members and for matters connected therewith.

The said Act received the assent of the President of India. It was included in the Ninth Schedule of the Constitution of India,

being item No.150, by the Constitutional 40th Amendment Act. It was published in the Kerala Gazette Extraordinary on 14th November, 1975. However, only on 24th January, 1986 a Notification was issued bringing the said Act into force with retrospective effect from 1st January, 1982.

RULES UNDER THE SAID ACT

3. Kerala Scheduled Tribes (Restriction on Transfer of lands and Restoration of Alienated Land) Rules, 1986 (1986 Rules) were framed for effective implementation of the 1975 Act and were published in the Kerala Gazette Extraordinary on 18th October, 1986.

PROCEEDINGS

4. Members of the Scheduled Tribes filed applications for restoration of their lands in the year 1988 in terms of the provisions of the 1975 Act and the 1986 Rules.

As the said Act was not implemented in letter and spirit, one Dr. Nallathampy Thera filed a writ petition which was marked as O.P. No.8879 of 1988 praying inter alia for issuance of a Writ of Mandamus compelling the State to implement the provisions of the Act and directing the concerned authorities to deal with and dispose of the applications filed therein. Before the High Court the learned Additional Advocate General appearing for the State submitted that :

> "utmost steps would be taken for the disposal of the applications and that the Act would be enforced in all its rigour."

Relying on or on the basis of the said statement, O.P. No. 8879 of 1988 was disposed of by the High Court on 15th October, 1993, inter alia, calling upon the State to give directions to the Authorities under the 1975 Act to dispose off the applications pending before them within 6 months from the said date.

The State, however, did not comply with the said directions within the said time frame. Extensions of time were sought for complying with the said directions. By the said process, a period of two years lapsed.

Another application for extension of time was filed for implementation of the Act and the High Court granted six months' time but issued certain directions inter alia for the purpose of monitoring the progress of the implementation of the Act.

The said conditions are as under:-

"(i) The State shall ensure that all the applications are disposed of within the extended time.

(ii) The State shall immediately communicate copies of this order to the Revenue Divisional Officers of all the Districts for compliance.

(iii) The Authorities under the Act, i.e., the Revenue Divisional Officers of the concerned Districts shall file affidavits before this court once in a month showing the progress achieved in the disposal of applications during that month. The first of these affidavit showing the progress-made until 31.12.1995 shall be filed before 15.1.1996. The next of the affidavits showing progress till 31.1.1996 shall be filed before 15.2.1996 and so on.

(iv) The State shall provide the necessary back up and support to the Revenue Divisional Officers to complete the work within the extended time now granted.

(v) The State or any of the Revenue Divisional Officers shall be at liberty to approach this court in the event of any difficulty being felt in disposing off the applications.

(vi) It is seen from the affidavit filed by the Government that the pendency of applications in the Districts of Palakkad, Wayanad, Idukki and Kottayam is unusually large. The Revenue Divisional Officers of these Districts are directed in particular to dispose of all the applications within the extended time."

Applications for restoration of lands which were pending were disposed of pursuant to the said directions. Appeals were filed in a few cases but in most of them the orders directing restoration of lands became final.

Strangely however, no actual restoration of land was effected. Another application was filed by the writ petitioner on 1st March, 1996 complaining about non-implementation of the said order.

The learned Additional Advocate General once again gave an assurance that the order of the authorities under the 1975 Act would be implemented. On or about 28th March, 1996 the High Court directed :-

"The learned Additional Advocate General assures the court that all out efforts will be made to dispose of all the pending applications within the time stipulated by this court and further that wherever there has been final orders passed, actual

restoration will also be formal orders are necessary today. Post on 31.5.1996."

(emphasis supplied)"

Further affidavits were filed by the Revenue Divisional Officers reporting progress in the disposal of the applications made under the Act.

On or about 13th August, 1996 the High Court issued the following directions :-

"(1) The Revenue Divisional Officers are directed to cause delivery of the properties covered by orders for restoration against which, no appeals are pending and in which no compensation is payable, forthwith and in any event within six weeks from today.

(2) In view of the submission that the officers are meeting with resistance in restoring possession the State and the District Superintendents of Police of all Districts are directed to afford the needed protection to the Revenue Divisional Officers to carry out their duty of restoring possession to the Tribals.

(3) The State and the Collectors of the various Districts are directed to make available to the Revenue Divisional Officers the necessary man power and support to carry out the implementation of the orders for restoration passed under the Act.

(4) The Revenue Divisional Officers will file statements before this court by 30.9.1996 reporting compliance with direction No.1"

An intra court appeal was preferred thereagainst. The matter was referred to a Full Bench. An order of stay was passed relying on or on the basis of a statement made before the Court that amendments to the 1975 Act were proposed to be made.

However, as the President of India declined to give his assent to the Bill passed by the Legislature of the State of Kerala for amendment of the said Act, the order of stay was vacated.

The Full Bench on 21st May, 1998 passed the following order:-

" Heard learned Additional Advocate General, Mr. T. Mohammed Youseff and Mr. A.X. Varghese, Advocate. The above application is filed to extend the order of stay granted in the Writ Appeal for a further period of six months from 21.5.1998. This Court granted the interim order of stay since at the time the Bill passed by the Legislative Assembly of the State of Kerala was pending consideration before the Hon'ble President of India. It is now stated in the affidavit that the Hon'ble President of India has declined assent to the Bill passed by the State Legislative Assembly. In the light of the Hon'ble President of India having declined assent to the Kerala Scheduled Tribe (Restriction on Transfer of Lands and Restoration of Alienated Lands)Amendment Act, 1996, there is no justification for this court extending the order to stay granted earlier. The interim stay granted earlier is vacated.

2. The learned Single Judge, while disposing of C.M.P. No. 28950 of 1995 in O.P. 8879 of 1988, was pleased to grant time till 30.9.1996 for reporting compliance with direction No.1 in the order. The time was extended from time to time for compliance with the directions till the order of stay was granted. Now that

the order of stay having been vacated, we grant six months time to the State for carrying out the direction contained in the order of the learned single judge dated 13th August 1996, passed in C.M.P. No. 28950 of 1995, *without prejudice to the right of the Government in considering the various aspects of the matter to bring forward suitable legislation with suitable changes, if they so desire."*

(emphasis added)

On or about 23rd November, 1998 an application for initiating proceedings under the Contempt of Courts Act, 1971 was filed against the State and its officers on the premise that orders of the High Court had not been complied with. A notice was issued therein.

A petition was filed by the State for extension of the period by six months from 21st November, 1998. However, a statement was made before the Full Bench that a new Bill would be introduced before the Legislative Assembly in terms whereof a permanent solution to the problem of alienation of tribal lands which had taken place during the period from 1.1.1960 and 1.1.1986 shall be dealt with. The Full Bench, by its order dated 6th January, 1999, directed :-

"This petition has been filed by the State to extend the time (sic) granted already by a period of six months from 21.11.98. We have perused the affidavit and heard the arguments of both sides. We have also heard Dr. P. Nalla Thampy Thera. He opposed the petition for extension of time tooth and nail. This Court has already granted six month's time. *The State has explained the reasons for its inability to introduce the new*

bill within the time granted earlier. We are satisfied with the reasons given in the affidavit. It is now stated in the affidavit that the Legislative Assembly is expected to commence its next session on 22.1.99 and that the new bill formulated by the Government will be introduced in this session. According to the Government, the new bill is expected to find a permanent solution to the problem of alienation of tribal lands which had taken for the period from 1.1.1960 to 1.1.1986. Therefore, they pray that in the interest of justice the State may be granted extension of time to introduce the Bill in this session.

2. We have considered the rival submissions and are of the opinion that in the interest of justice, the time already granted has to be extended by three months from today. As already noticed, the Assembly session is to commence on 22.1.1999 and the State is proposing to introduce the Bill in this session.

3. In view of the above, the time already granted by this Court is hereby extended by three months from today. The State shall introduce the Bill in this session of the Assembly and complete all the other formalities within the time now granted. We make it clear that there will be no further extension of time. The State is directed to pay cost of this petition to Dr. Nalla Thampy Thera which is fixed at Rs.5000/-, by way of demand draft drawn in his name, within three weeks from today."

(emphasis supplied)

WRIT PROCEEDINGS

5. Indisputably the Legislature of the State thereafter enacted the Kerala Restriction on Transfer by and Restoration of Lands to

the Scheduled Tribes Act, 1999 (for short 'the 1999 Act'), which inter alia deals with transfer and alienation of agricultural lands.

Constitutional validity of the 1999 Act, specially the proviso appended to Section 5(1), Section 5(2), Section 6 and Section 22 were challenged by filing two writ petitions; one marked as O.P. No.25332 of 1999 filed by Niyamvedi, respondent No.1 in Civil Appeal No.105 of 2001 and another O.P. No.26499 of 1999 by Peoples Union for Civil Liberties, Kerala State Unit, respondent No.1 in Civil Appeal No.104 of 2001.

In the aforesaid writ petitions counter-affidavits were filed on behalf of the Union of India supporting the stand of the tribes.

Malayora Karshaka Federation (appellant before us in C.A. No.899 of 2001) was impleaded as a party therein. By reason of the impugned judgment and order dated 24th August, 2000, the High Court declared the aforesaid provisions as ultra vires.

FINDINGS OF THE HIGH COURT

6. The High Court, while acknowledging, the legislative intent of the State of Kerala, opined that it was colourable in nature as by reason of the provisions of the 1975 Act and the orders passed in favour of the members of the Scheduled Tribes, a vested right accrued to the members of Scheduled Tribes was destroyed by reason of the provisions of 1999 Act.

Proviso to Sections 5(1), Section 5(2), Section 6 and Section 22 of the 1999 Act were held to be arbitrary. The said provisions were also held to be discriminatory and thus violative of Article 14 of the Constitution of India. The issue in regard to violation of Article 19(1)(e) of the Constitution of India was determined on the

premise that no sufficient material had been placed before the Court.

Inter alia relying on or on the basis of the decision of this Court in *Madan Mohan Pathak v. Union of India,* [(1978) 2 SCC 50], the High Court held that in effect and substance, by reason of the provisions of the 1999 Act, a judicial decision was sought to be nullified.

The contention of the respondents that Presidential assent having not been obtained, the 1999 Act was violative of Article 254 of the Constitution of India was, however, rejected. With regard to compliance of the requirements of Article 338 of the Constitution of India, consultation with Scheduled Castes/Scheduled Tribes Commission was held to be not imperative.

Section 22 of the 1999 Act was held to be ultra vires Article 14 of the Constitution of India, having regard to the accrued rights of the members of the Scheduled Tribes in view of the issuance of the writ of mandamus issued, the High Court directed :-

> "In the light of our discussion as above, we declare the proviso to Section 5(1), Section 5(2), Section 6 and Section 22 of the Kerala Restriction on Transfer by and Restoration of Lands to Scheduled Tribes Act, 1999, Act 12 of 1999 as unconstitutional and void. We strike down the proviso to Section 5(1), Section 5(2), Section 6 and Section 22 of Act 12 of 1999. We direct the State and the Authorities under Act 31 of 1975 to implement the orders for restoration passed under the Kerala Scheduled Tribes (Restriction of Transfer of land and Restoration of Alienated Lands) Act, 1975, Act 31 of 1975 and restrain the State and the Authorities under Act 12 of 1999 from enforcing

the proviso to Section 5(1), Section 5(2), Section 6 and Section 22 of Act 12 of 1999."

THE APPEALS BEFORE US

7. Civil Appeal Nos. 104-105 of 2003 have been filed by the State of Kerala against the common judgment and order dated 24th August, 2000 passed by a Division Bench of the Kerala High Court in O.P. Nos. 25332 and 26499 of 1999 filed by Niyamavedi and Peoples Union for Civil Liberties, Kerala State Unit striking down the proviso to Section 5(1), Section 5(2), Section 6 and Section 22 of the 1999 Act.

Civil Appeal No.899 of 2001 has been filed by Malayora Karshaka Federation Kerala Meenangadi (respondent No.7 before the High Court in O.P. No.25332 of 1999) against the aforesaid order dated 24th August, 2000.

Civil Appeal No.7079 of 2001 has been filed by M. Mohan Kumar, Chief Secretary, Government of Kerala against the order dated 4th December, 2000 passed by a Division Bench of the High Court in C.C.C. No. 542 of 1986 whereby the Court directed the appellant to appear before it for framing charges against him in not complying with the final direction issued by the Court on 18th December, 1999.

CONTENTIONS

8. Mr. T.L. Viswanath Iyer, learned senior counsel and Mr.Dayan Kishnan, Advocate, appearing on behalf of the appellants would submit :-

(i) The High Court committed a manifest error in holding that the 1999 Act suffers from the vice of colourable

exercise of power or is otherwise mala fide despite holding that the Legislature of the State of Kerala had the requisite legislative competence therefor.

(ii) The members of the Scheduled Tribes had no fundamental or common law right to obtain restoration of possession of their lands which had already been alienated.

(iii) Such a right having been conferred upon them by reason of the provisions of 1975 Act, the same could be taken away and/or modified or altered by reason of a subsequent Act which comes within Entry 18 of the List II of Seventh Schedule of the Constitution of India.

(iv) Only because non-agricultural lands had been kept out of purview of 1999 Act, the same by itself did not attract the wrath of Article 14 of the Constitution of India. .

(v) The provisions of the 1999 Act being more beneficial compared to the provisions of 1975 Act, only because the tribes would be allotted lands outside their original habitants, the same would not attract Article 21 of the Constitution of India, particularly when they would be getting 2 hectares of land as also grant for payment of compensation to the land holder in stead and place of repayable amount of loan as provided for in the 1975 Act.

(vi) Keeping in view the nature of mandamus issued by the High Court in the earlier round of litigation, it would not mean that the State was not precluded from amending or repealing the 1975 Act.

(vii) The decision of this Court in *Madan Mohan Pathak* (supra) and *Hoechst Pharmaceuticals Ltd. v. State of Bihar,* [(1983) 4 SCC 45] having been explained in *Indian Aluminium Co. v. State of Kerala,* [(1996) 7 SCC 637] as also a Constitution Bench of this Court in *State of Tamilnadu v. Arooran Sugars Ltd.,* [(1997) 1 SCC 326], the impugned judgment cannot be sustained.

(viii) The tribals in whose favour the orders of restoration had been passed having not filed any writ petition, it must be presumed that they were not aggrieved by the provisions of the 1999 Act, particularly in view of the fact that their association had been consulted by the Government Officials and in that view of the matter the writ petitioner – association had no *locus standi* to maintain the public interest litigation having regard to *Baba Charan Dass Udhasi v. Mahant Basant Das Babaji Chela Baba Laxmandas Udasi Sadhu* [(2000) 6 SCC 1].

(x) In any event, a declaration by a Superior Court that a subsequent statute is ultra vires would not wipe off the earlier statute automatically.

(xi) The purchasers of land having acquired the properties in 1950s must be held to have acquired an indefeasible right over the same and thus the 1975 Act even to that extent was not applicable.

Mr. Rajinder Sachar, learned senior counsel appearing on behalf of respondents in C.A. Nos. 104-105 of 2001, on the other hand, would contend:-

(i) The 1999 Act being in the teeth of the mandamus issued by the High Court has rightly been held to be unconstitutional in view of the fact that nothing has been brought on record to show that the 1999 Act was enacted by the legislature despite knowledge that the directions issued by the High Court had attained finality.

(ii) The 1975 Act having conferred a right of restoration on the Members of the Scheduled Tribes, both in respect of agricultural and non-agricultural lands, the provisions of 1999 Act and in particular Section 6 thereof having confined its operation only to agricultural land and that too with retrospective effect from 24th January, 1986, must be held to be ultra vires Article 14 of the Constitution of India.

(iii) The Members of the Scheduled Tribes being mostly residents of forests and the lands restored in their favour being forest lands, no legal infirmity was committed by the High Court in holding that the tribals; the community being weakest of weak, should not be deprived therefrom having regard to their constitutional right of life as adumbrated in Article 21 of the Constitution of India.

(iv) As from the statistics furnished by the State itself it would appear that only about 10 percent of the applicants had more than 2 hectares of land, the right of restoration of the marginal farmers could not have been taken away.

(v) Once a statutory protection is granted to the beneficiaries, the same could not have been withdrawn.

Mr. Verghese, learned counsel appearing on behalf of respondent No.1 in Civil Appeal No.899 of 2001 supplementing the arguments of Mr. Sachar urged:

(i) That the Members of Scheduled Tribes having come under attack by economically more advanced and politically more powerful ethnic groups who infiltrated into tribal regions in search of land and new economic possibilities, keeping in view Article 46 of the Constitution of India, they were entitled to restoration of land in terms of the judgment of the High Court passed in O.P. No.8879 of 1988.

(ii) Provisions of 1975 Act having been found to be constitutionally valid, the accrued and vested rights of the tribals could not have been taken away by reason of 1999 Act or otherwise.

(iii) The Writ-Petitioner – association having been fighting for the cause of the tribals for a long time, it cannot be said that they had no locus standi to file the public interest litigation.

(iv) Even the Union of India having supported the case of the tribals, there is no reason as to why this Court should interfere with the impugned judgment.

(v) The 1999 Act being not a validating statute, the impugned judgment is unassailable, particularly having regard to the objective of 1975 Act vis-à-vis 1999 Act.

(vi) It is incorrect to contend that the State before enactment of 1999 Act consulted the true representatives of the tribals.

(vii) In any view of the matter as the members of the tribal community became entitled to restoration of their land by reason of the provisions of the 1975 Act, there was no reason as to why the original land would not be restored to them.

The 1975 ACT

9. The 1975 Act was enacted by the State in terms of Entry 6 of List III of Seventh Schedule of the Constitution of India.

Section 2 contains interpretation clauses defining the terms specified therein.

Section 2(b) defines 'immovable property' to include standing crops and trees but does not include growing grass.

'Scheduled tribe' has been defined in Section 2(e) to mean any of the Scheduled Tribes relating to the State as specified in the Constitution (Scheduled Tribes) Order, 1950.

Section 2(g) defines 'transfer' as under :-

" 'transfer' , in relation to immovable property, means an act by which immovable property, is conveyed to any documentary or oral transaction, whether by way of mortgage with or without possession, lease, sale, gift or exchange, or in any other manner, not being a testamentary disposition; and includes a charge, 'vilapanayam', 'unduruthi', contract relating to immovable property, mortgage, pledge or hypothecation of

crops or standing trees on payment of consideration or otherwise, voluntary surrender and abandonment.

Explanation. – For the purposes of this clause. –

(i) "vilapanyam" means hypothecation of crops on payment of consideration or otherwise;

(ii) "unduruthi" means an assignment of the right to collect the usufructs available or anticipated to be available to any land during specified term for a specified price."

Section 4 imposes restrictions on transfer by providing a non obstante clause in terms whereof after the commencement of the Act any transfer effected by a member of the Scheduled Tribe of immovable property possessed, enjoyed or owned by him to a person other than a member of a Scheduled Tribe, without the previous consent in writing of the competent authority, would be invalid.

Section 5 of the Act invalidated certain transfers made by tribals to persons other than tribals after the first of January, 1970 and before commencement of the Act :-

"5. Certain transfers to be invalid – Notwithstanding anything to the contrary contained in any other law for time being in force, or in any contract, custom or usage, or in any judgment, decree or order of any court, any transfer of immovable property possessed, enjoyed or owned by a member of a Scheduled Tribe to a person other than a member of a Scheduled Tribe, effected on or after the Ist day of January, 1960, and before the commencement of this Act shall be deemed to be invalid."

Under Section 6 of the 1975 Act members of the Schedule Tribes became entitled to restoration of possession of the properties, transfers which stood invalidated by operation of Section 4 and Section 5 of the Act. It provided for applications to be made by the Tribals for restoration of alienated lands to the Revenue Divisional Officer within the time prescribed therefor. The Revenue Divisional Officer was to make enquiries and after being satisfied with the application of the Act was to direct restoration of possession to the applicant.

Section 6 which is material for our purpose, inter alia, reads as under:-

> "6. Reconveyance of property – (1) Where by reasons of a transfer of immovable property which is invalid under Section 4 or Section 5, a member of a Scheduled Tribe has ceased or ceases to be in possession or enjoyment thereof he shall be entitled to the restoration of possession or enjoyment, as the case may be of such property.
>
> (2) Any person entitled to be restored to the possession or enjoyment of any immovable property under sub-section (1) or any other person on his behalf may make an application, either orally or in writing to the Revenue Divisional Officer within a period of one year from the date of commencement of this Act or such further period as may be specified by Government by notification in the Gazette -
>
> (a) for restoration of possession, or enjoyment, as the case may be, of such property, if such transfer had been made; before the date of commencement of this Act.

(b) for restoration of possession or enjoyment, as the case may be, of such property and for the prosecution of the person who has procured such transfer, if such transfer was made on or after the date of commencement of this Act."

Section 11 provides for liability to pay amount.

Section 12 provides for advancement of loan by the Government for payment of the amount on such terms and conditions as has been laid down under sub-sections (2) and (3) thereof.

The Act also prescribed offences and provided for penalties etc.

Section 22 contains the rule making power.

1999 ACT

The 1999 Act was published in the Kerala Gazette Extraordinary on 20th April, 1999. It was given a retrospective effect and retroactive operation from 24th January, 1986.

'Land' has been defined in 2(b) to mean any agricultural land.

Section 5 of the Act reads as under:-

"5. Certain transfer to be invalid –

(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, or in any contract, custom or usage, or in any judgment, decree or order of any court, any transfer of land possessed, enjoyed or owned by a member of a Scheduled Tribe to a person other than a member of a Scheduled Tribe, effected on or after the 1st day of January,

1960, and before the commencement of this Act shall be deemed to be invalid:

Provided that nothing in this section shall render invalid any transfer of land possessed, enjoyed or owned by a member of a Scheduled Tribe to a person other than a member of a Scheduled Tribe effected during the aforesaid period and the extent of which does not exceed two hectares.

(2) Notwithstanding anything contained in sub-section (1) or in any judgment, decree or order of any Court or other authority, in cases where the land involved in such transfer is used for agricultural purposes, the transferee thereof shall be entitled to retain in his possession the said land upto an extent of two hectares which shall be demarcated by the Revenue Divisional Officer by order and in the manner as may be prescribed."

Section 6 providing for allotment of lands reads thus:-

"6. Allotment of lands.- Notwithstanding anything contained in section 5 or in any judgment, decree or order of any Court or other authority, a member of a Scheduled Tribe who had effected any transfer of land, possessed, enjoyed or owned by him, to a person other than a member of a Scheduled Tribe, between the 1st day of January, 1960 and the 24th day of January, 1986 and where an application for restoration of right under Section 6 of the Kerala Scheduled Tribes (Restriction of Transfer of Lands and Restoration of Alienated Lands) Act, 1975 (31 of 1975) has been filed before publication of this Act in the Gazette, but the possession or enjoyment thereof, has not been restored to him and such transfer has been validated by the proviso to sub-section (1) of Section 5 or the transferee

thereof has been made eligible for the retention of said land under sub-section (2) of Section 5, shall be entitled to restoration of equal extent of land by way of allotment from the Government:

Provided that where the extent of the land so allotted in respect of which there is eligibility for restoration of rights, is less than forty ares, Government shall allot the rest of the land required to make the total extent equal to forty ares (One acre)."

Section 8 providing for liability to pay amount reads :-

"8. Liability to pay amount.-

(1) Notwithstanding anything contained in any other law for the time being in force, where the possession or enjoyment of any land is restored to a member of a Scheduled Tribe under this Act, an amount equal to the aggregate of the actual amount of consideration received by such member at the time of the transfer and an amount determined by the competent authority for improvements, if any, made after the transfer and before such restoration shall be paid by him to the person from whom possession or enjoyment, as the case may be, was restored, in accordance with the rules made under this Act:

Provided that no amount shall be payable if the transfer was effected on or after the commencement of this Act.

(2) The amount determined by the competent authority under sub-section (1) shall be final and shall not be called in question in any court.

(3) The amount payable under sub-section (1) shall be recoverable in such manner as may be prescribed.

Section 10 provides for assignment of land, which reads:-

"10. Assignment of land.-

(1) Notwithstanding anything contained in Section 6 or in the Kerala Government Land Assignment Act, 1960 (30 of 1960) and the rules issued thereunder, the Government shall assign land to the landless families of the Scheduled Tribes in the State, an extent not exceeding forty ares of land in the district they reside within a period of two years from the date of publication of this Act in the Gazette, or such further period as may be specified by Government by notification in the Gazette, and in the manner as may be prescribed.

(2) Where the extent of the land in the possession and enjoyment of any family of the Scheduled Tribe in the State, is less than 40 Ares such family shall be entitled to get assigned more land which is necessary to make the total extent of the land equal to 40 Ares."

Section 11 provides for constitution of Scheduled Tribe Rehabilitation and Welfare Fund and utilization thereof.

Section 21 provides for power to make Rules.

Section 22 is the Repealing and Saving clause.

It reads as under:-

"22. Repeal and saving.-

(1) The Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975 (31 of 1975) is hereby repealed.

(2) Notwithstanding the repeal of the said Act, all orders issued by the competent authority or the Revenue Divisional Officer, so far as they are not inconsistent with the provisions of this Act shall be deemed to have been made under the corresponding provisions of this Act and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under this Act. Every proceedings pending before a Court on a complaint under Section 14 of the said Act shall be deemed as a proceeding under the corresponding provisions of this Act and shall be continued accordingly."

CONSTITUTIONAL VALIDITY OF 1999 ACT

LEGISLATIVE BACKDROP

11. The validity of 1975 Act is not in question. It, having regard to its inclusion in the Ninth Schedule of the Constitution of India by Constitution 40th Amendment Ac, 1976 read with Article 31B which precludes an attack to the provisions of such an enactment on the ground that it violates any provisions of Part III of the Constitution of India, the validity thereof was upheld by a leaned Single Judge of the Kerala High Court in *Bhavani v. State of Kerala,* [1989 (1) KLT (Short Note Case No.58) at 37].

We may also notice that Jagannadha Rao, C.J. (as His Lordship then was) in *Fr. Thomas Kubukkat v. Union of India,* [1994 (2) KLT 25] also upheld the provisions of Section 1(3) of 1975 Act stating the said provision to be conditional legislation and not a delegated legislation.

The Constitutional validity of statutes enacted for the benefit of the members of Scheduled Tribe by some other State although not identical has been upheld by this Court in *Manchegowda and others v. State of Karnataka and others,* [(1984) 3 SCC 301], *Lingappa v. State of Maharashtra,* [(1985) 1 SCC 479]; *P. Rama Reddy v. State of A.P.* [(1988) 3 SCC 433] and *Samtha v. State of Andhra Pradesh,* [(1997) 8 SCC 191].

These decisions have been rendered on statutes which are not absolutely identical. All of which are not in pari materia with the other.

However, we may notice that in *Manchegowda* (supra) this Court held:-

> **"19.** We have earlier noticed that the title which is acquired by a transferee in the granted lands, transferred in contravention of the prohibition against the transfer of the granted lands, is a voidable title which in law is liable to be defeated through appropriate action and possession of such granted lands transferred in breach of the condition of prohibition could be recovered by the grantor. The right or property which a transferee acquires in the granted lands, is a defeasible right and the transferee renders himself liable to lose his right or property at the instance of the grantor. We have further observed that by the enactment of this Act and particularly

Section 4 and Section 5 thereof, the Legislature is seeking to defeat the defeasible right of the transferee in such lands without the process of a prolonged legal action with a view to speedy resumption of such granted lands for distribution thereof to the original grantee or their legal representatives and in their absence to other members of the Scheduled Castes and Scheduled Tribes communities. In our opinion, this kind of defeasible right of the transferee in the granted lands cannot be considered to be property as contemplated in Articles 31 and 31-A. The nature of the right of the transferee in the granted lands on transfer of such lands in breach of the condition of prohibition relating to such transfer, the object of such grant and the terms thereof, also the law governing such grants and the object and the scheme of the present Act enacted for the benefit of the weaker sections of our community, clearly go to indicate that there is in this case no deprivation of such right or property as may attract the provisions of Articles 31 and 31-A of the Constitution."

We are not concerned with the constitutional validity of 1975 Act. We would at an appropriate stage deal with the matter in regard to the effect thereof.

COLOURABLE LEGISLATION

12. We have noticed hereinbefore that the Division Bench of the High Court has upheld the legislative competence of the Legislature of the State of Kerala. We, therefore, really at pains to understand as to how the doctrine of 'Colourable Legislation' could be invoked by the learned Judge of the High Court.

The doctrine of 'Colourable Legislation" is directly connected with the legislative competence of the State. Whereas the 1975 Act was enacted in terms of Entry 6 List III of the Seventh Schedule of the Constitution of India providing for transfer of lands; the 1999 Act was enacted in terms of Entry 18 List II thereof. It reads as under :-

> "18. Land, that is to say, right in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land ; land improvement and agricultural loans; colonization."

The 1999 Act, thus, having confined itself to 'agricultural land', indisputably the State Legislature only has the requisite legislative competence therefor.

It is one thing to say that an enactment suffers from vice of colourable legislation on the premise that it does not have legislative competence but it is another thing to say that only because the Act was amended purporting to nullify an earlier Act (in the words of the High Court), the same by itself would attract the said doctrine.

For invoking the doctrine of 'Colourable Legislation' the legislature must have transgressed the limits of its constitutional power patently, manifestly and directly.

The doctrine of 'Colourable Legislation', in our opinion, has no application in the instant case. The said doctrine is founded on legislative competence of the State. An act of mala fide on the part of the legislature also is beyond the province of judicial review. In fact no motive can be attributed to the Legislature for enacting a particular statute. The question in regard to the constitutionality of

the statute must be considered keeping in view only the provisions of the Constitution.

In *K.C. Gajapathi Narayan Deo v. The State of Orissa* [(1954) 1 SCR 1], this Court held:

> "9. It may be made clear at the outset that the doctrine of colourable legislation does not involve any question of bona fides or mala fides on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motive does not arise at all. Whether a statute is constitutional or not is thus always a question of power."

In *R.S. Joshi, Sales Tax Officer, Gujarat and Others v. Ajit Mills Limited and Another* [(1977) 4 SCC 98], this Court held as under:

> "2. A prefatory caveat. When examining a legislation from the angle of its vires, the Court has to be resilient, not rigid, forward-looking, not static, liberal, not verbal — in interpreting the organic law of the nation. We must also remember the constitutional proposition enunciated by the U.S. Supreme Court in Munn v. Illinois1 viz. "that courts do not substitute their social and economic beliefs for the judgment of legislative bodies". Moreover, while trespasses will not be forgiven, a presumption of constitutionality must colour judicial construction. These factors, recognised by our Court, are essential to the modus vivendi between the judicial and

legislative branches of the State, both working beneath the canopy of the Constitution.

*** *** ***

13. Bearing in mind the quintessential aspects of the rival contentions, let us stop and take stock. The facts of the case are plain. The professed object of the law is clear. The motive of the legislature is irrelevant to castigate an Act as a colourable device. The interdict on public mischief and the insurance of consumer interests against likely, albeit, unwitting or "ex abundanti cautela" excesses in the working of a statute are not merely an ancillary power but surely a necessary obligation of a social welfare state. One potent prohibitory process for this consummation is to penalize the trader by casting a no-fault or absolute liability to "cough up" to the State the total "unjust" takings snapped up and retained by him "by way of tax" where tax is not so due from him, apart from other punitive impositions to deter and to sober the merchants whose arts of dealing with customers may include "many a little makes a mickle'. If these steps in reasoning have the necessary nexus with the power to tax under Entry 54 List II, it passes one's comprehension how the impugned legislation can be denounced as exceeding legislative competence or as a "colourable device" or as "supplementary, not complementary'."

[See also *Dharam Dutt and others v. Union of India,* [(2004) 1 SCC 712]."

The principles of determining the constitutionality of statute has been stated in *Gujarat Ambuja Cements Ltd. v. Union of India,* [(2005) 4 SCC 214] thus:-

> **"28.** Having determined the parameters of the two legislative entries the principles for determining the constitutionality of a statute come into play. These principles may briefly be summarised thus:
>
> (a) The substance of the impugned Act must be looked at to determine whether it is in pith and substance within a particular entry whatever its ancillary effect may be [*Prafulla Kumar Mukherjee v. Bank of Commerce Ltd.,* AIR at p. 65, *A.S. Krishna v. State of Madras, State of Rajasthan v. G. Chawla, Katra Educational Society v. State of U.P., D.C. Johar & Sons (P) Ltd. v. STO and Kannan Devan Hills Produce v. State of Kerala*].
>
> (b) Where the encroachment is ostensibly ancillary but in truth beyond the competence of the enacting authority, the statute will be a colourable piece of legislation and constitutionally invalid (*A.S. Krishna v. State of Madras, A.B. Abdul Kadir v. State of Kerala,* SCC at p. 232 and *Federation of Hotel & Restaurant Assn. of India v. Union of India,* SCC at p. 651). If the statute is legislatively competent the enquiry into the motive which persuaded Parliament or the State Legislature into passing the Act is irrelevant *(Dharam Dutt v. Union of India).*
>
> (c) Apart from passing the test of legislative competency, the Act must be otherwise legally valid and would also have to pass the test of constitutionality in the sense that it cannot be

in violation of the provisions of the Constitution nor can it operate extraterritorially. (See *Poppatlal Shah v. State of Madras.*)"

Has the legislature of the State of Kerala transgressed the limitations of its constitutional power, as has been held by the High Court, is the question?

We have pointed out heretobefore that the doctrine of colourable legislation is strictly confined to the question of legislative competence of the State Legislature to enact a statute. Once it was opined by the High Court that having regard to Entry 51, List II of the Seventh Schedule of the Constitution of India, the Legislature of the State of Kerala had the requisite legislative competence to enact the 1999 Act, that should have been held to be the end of the matter. The High Court could not have, in our respectful opinion, entered into the said question through a side-door so as to hold that the transgression of the limitations of constitutional power may be disguised, covert or indirect.

The High Court, in our opinion, again with utmost respect, has committed a fundamental error in failing to keep a distinction in mind in regard to the power of a law making authority which is of a qualified character and the power granted to a legislative authority which is absolutely without any limitation and restriction, being plenary in character.

A statute in view of the decision of this Court in *Gujarat Ambuja Cements Ltd.* (supra), in the event of it being held within the ambit of the legislative competence of the State, could be declared ultra vires only on the premise that it is violative of the provisions of Part III of the Constitution of India or any other

provisions but not on the ground of colourable exercise of power or mala fide on the part of the legislature. The object, purpose or design referred to by the High Court should be taken into consideration for the purpose of examining its constitutionality on the touchstone of the provisions of Part III of the Constitution of India and not otherwise. In that view of the matter, the High Court committed a serious error in relying upon D*warkadas Shrinivas of Bombay v. Sholapur Spinning and Weaving Company Ltd. and Others* [AIR 1954 SC 119] and *Jagannath Baksh Singh v. State of U.P.* [AIR 1962 SC 1563], which did not deal with the question of legislative competence of the legislature of a State, as was the question before the High Court.

No material was placed before the High Court to establish that the 1999 Act was confiscatory in nature.

It is one thing to say that a citizen of India having been conferred with a right on lands by reason of a statutory provision, has been deprived therefrom without payment of any compensation and, thus, the same would be violative of Article 300A of the Constitution of India, but, it is another thing to say that on that ground alone the legislation should be held to be a colourable one.

We have adverted to the statement of Objects and Reasons of the 1999 Act. The legislature had a broad object in mind. Whether the Act stands the scrutiny of limitations of the State's power so as to achieve its object and purpose is one question, but, it is another question that while doing so it has adopted a device and a cloak to confiscate the property of the citizen taxed as was the case in *K.T. Moopil Nair v. State of Kerala* [AIR 1961 SC 552].

The High Court in its judgment has referred to Shankaranarayana v. State of Mysore [AIR 1966 SC 1571]. But, in our opinion, and with utmost respect, it again failed to apply the principles laid down therein correctly. Therein itself the court had noted that if the legislature is competent to pass a particular law, the motives which impel it to pass the same become really irrelevant.

The High Court furthermore committed a serious error insofar as it made an incidental observation that the tribals who enjoy the protection of Constitution of India and sought to be protected by the 1975 Act could not have been denied the benefits under the 1999 Act, which in our opinion, was not a relevant question.

The provisions of the Constitution in this behalf are enabling in nature. When a constitutionality of an enactment comes to be questioned, the superior courts are required to pose unto themselves the right question.

The question, in our opinion, should have been whether the statute is valid having been enacted to achieve the constitutional goal set out not only in Part III of the Constitution of India but also Part IV and IVA thereof.

The rights conferred upon the class of persons including the protected class, in terms of 1975 Act, were statutory in nature. They cannot be categorized as plainly constitutional rights. It is one thing to say that some rights are constitutional in nature/origin being part of the expansive regime of Article 21, but, it would not be correct to raise the same to the exalted status of constitutional rights. A right which primarily flows from a statute, cannot claim its constitutional pedigree to become a constitutional threshold,

against which constitutionality of a statute can be tested. It is trite that a right which may be conferred by a statute can also be taken away by another.

It is also a trite law that the State is entitled to change its legislative policy having regard to the ground realities and changing societal condition. In fact, the legislature is expected to take steps for enacting a new statute or amending the same so as to keep pace with the changing societal condition as well as taking into consideration the development of law, both domestic and international.

The High Court, in our opinion, furthermore committed a serious error in opining that although the legislature had the legislative competence to enact Act 12 of 1999, but nevertheless, proviso to Sections 5(1) and 5(2) thereof would be held to be colourable. The High Court should have examined the question of their constitutionality on the touchstone of Articles 14 and 21 of the Constitution of India and not on the premise that the said provisions are colourable in nature.

PRESIDENTIAL ASSENT

13. It was held by the High Court that Presidential Assent was necessary and the 1999 Act was enacted to by-pass the mandatory requirement of the President's Assent. In determining the said issue, it again ought to have posed unto itself the right question, viz., whether the Presidential Assent was necessary for enacting a statute which came within the purview of List II of the Seventh Schedule of the Constitution of India. The answer thereto must be rendered in negative.

The 1975 Act dealt with both agricultural and non-agricultural lands. Transfer of land comes within the purview of Entry 6, List III of the Seventh Schedule of the Constitution of India. There exists a Parliamentary Act in that behalf, as for example, Transfer of Property Act. Only because the 1975 Act could be held to be in conflict with the provisions of the Transfer of Property Act, the Presidential Assent was necessary having regard to Clause (2) of Article 254 of the Constitution of India but once the said statute is repealed and in its place a new Act is brought on the statute book, which comes strictly within the purview of Entry 49, List II of the Seventh Schedule of the Constitution of India, no Presidential Assent would be necessary. Presidential Assent would be necessary for the purpose of amendment of the Act and not for enacting a separate statute which came within the purview of a different entry and a different List.

It is furthermore well-known that Article 254 of the Constitution of India would be attracted only in a case where two statutes are enacted under the Concurrent List, viz., one by the State Legislature and the other by the Parliament of India, and not in any other case.

EFFECT OF ISSUANCE OF A WRIT OF MANDAMUS

14. Before adverting to the said question, we may notice the background facts leading to the issuance of a writ of mandamus.

Admittedly the State was not implementing the provisions of the 1975 Act. Dr. P. Nalla Thampy Thera filed O.P. No.8879 of 1988 for direction upon the State and its officers to implement the provisions of the 1975 Act. The learned Additional Advocate General appearing for the State gave an undertaking to the effect

that “utmost steps would be taken for the disposal of the applications and that the Act would be enforced in all its rigour”, on the basis whereof the Original Petition was allowed on 15th October, 1993 directing the State to give directions to the Authorities under the Act to dispose of the applications pending before them within six months of that date.

As the State had taken extension of time by an order dated 13th August, 1996, a learned Single Judge, inter alia, directed the Revenue Divisional Officers to cause delivery of the properties covered by orders for restoration against which no appeals were pending and in which no compensation was payable, forthwith and in any event within six weeks from that date.

A writ appeal was preferred thereagainst and an interim order of stay was passed on 11th October, 1996. The matter was referred to a Full Bench. We have noticed heretobefore the order dated 25th November, 1998.

We have also noticed the order of the Full Bench dated 6th January, 1999.

The High Court was, thus, aware of the impending legislation. The extension of time was subject to a new legislation.

The 1975 Act was a conditional legislation. It came into force with effect from 24th January, 1986. Directions were issued only in regard to implementation of the statutory provisions It was not a case where by reason of issuance of writ of mandamus, certain benefits were conferred on a person or a group of persons.

In *Madan Mohan Pathak* (supra), the Calcutta High Court had issued a writ of mandamus directing the Life Insurance

Corporation to pay annual cash bonus to Class III and Class IV employees for years April 1, 1975 to March 31, 1976 along with their salary for the month of April, 1976 as provided by the Settlement. The said decision attained finality as Letters Patent Appeal preferred thereagainst had been withdrawn by the Life Insurance Corporation. In the meantime a Parliamentary Act, known as Life Insurance Corporation (Modification of Settlement) Act, 1976 came into force.

In the said factual backgrounds, it was held :-

"7. But before we proceed further, it would be convenient at this stage to refer to one other contention of the petitioner based on the judgment of the Calcutta High Court in Writ Petition 371 of 1976. The contention was that since the Calcutta High Court had by its judgment dated May 21, 1976 issued a writ of mandamus directing the Life Insurance Corporation to pay annual cash bonus to Class III and Class IV employees for the year April 1, 1975 to March 31, 1976 along with their salary for the month of April, 1976 as provided by the Settlement and this judgment had become final by reason of withdrawal of the Letters Patent Appeal preferred against it, the Life Insurance Corporation was bound to obey the writ of mandamus and to pay annual cash bonus for the year April 1, 1975 to March 31, 1976 in accordance with the terms of clause 8(ii) of the Settlement. It is, no doubt, true, said the petitioners, that the impugned Act, if valid, struck at clause 8(ii) of the Settlement and rendered it ineffective and without force with effect from April 1, 1975 but it did not have the effect of absolving the Life Insurance Corporation from its obligation to

carry out the writ of mandamus. There was, according to the petitioners, nothing in the impugned Act which set at naught the effect of the judgment of the Calcutta High Court or the binding character of the writ of mandamus issued against the Life Insurance Corporation. This contention of the petitioners requires serious consideration and we are inclined to accept it.

1. It is significant to note that there was no reference to the judgment of the Calcutta High Court in the Statement of Objects and Reasons, nor any non obstante clause referring to a judgment of a Court in Section 3 of the impugned Act. The attention of Parliament does not appear to have been drawn to the fact that the Calcutta High Court has already issued a writ of mandamus commanding the Life Insurance Corporation to pay the amount of bonus for the year April 1, 1975 to March 31, 1976. It appears that unfortunately the judgment of the Calcutta High Court remained almost unnoticed and the impugned Act was passed in ignorance of that judgment. Section 3 of the impugned Act provided that the provisions of the Settlement insofar as they relate to payment of annual cash bonus to Class III and Class IV employees shall not have any force or effect and shall not be deemed to have had any force or effect from April 1, 1975. But the writ of mandamus issued by the Calcutta High Court directing the Life Insurance Corporation to pay the amount of bonus for the year April 1, 1975 to March 31, 1976 remained untouched by the impugned Act. So far as the right of Class III and Class IV employees to annual cash bonus for the year April 1,

1975 to March 31, 1976 was concerned, it became crystallised in the judgment and thereafter they became entitled to enforce the writ of mandamus granted by the judgment and not any right to annual cash bonus under the Settlement. This right under the judgment was not sought to be taken away by the impugned Act. The judgment continued to subsist and the Life Insurance Corporation was bound to pay annual cash bonus to Class III and Class IV employees for the year April 1, 1975 to March 31, 1976 in obedience to the writ of mandamus. The error committed by the Life Insurance Corporation was that it withdrew the Letters Patent Appeal and allowed the judgment of the learned Single Judge to become final. By the time the Letters Patent Appeal came up for hearing, the impugned Act had already come into force and the Life Insurance Corporation could, therefore, have successfully contended in the Letters Patent Appeal that, since the Settlement, insofar as it provided for payment of annual cash bonus, was annihilated by the impugned Act with effect from April 1, 1975, Class III and Class IV employees were not entitled to annual cash bonus for the year April 1, 1975 to March 31, 1976 and hence no writ of mandamus could issue directing the Life Insurance Corporation to make payment of such bonus. If such contention had been raised, there is little doubt, subject of course to any constitutional challenge to the validity of the impugned Act, that the judgment of the learned Single Judge would have been upturned and the writ

petition dismissed. But on account of some inexplicable reason, which is difficult to appreciate, the Life Insurance Corporation did not press the Letters Patent Appeal and the result was that the judgment of the learned Single Judge granting writ of mandamus became final and binding on the parties. It is difficult to see how in these circumstances the Life Insurance Corporation could claim to be absolved from the obligation imposed by the judgment to carry out the writ of mandamus by relying on the impugned Act.".

Madan Mohan Pathak (supra) has been followed in *P. Venugopal v. Union of India,* [(2008) 5 SCC 1], wherein it was opined :-

"As in *Mohan Pathak* case (para 8), as quoted hereinabove, in the instant case also Parliament does not seem to have been apprised about the pendency of the proceedings before the Delhi High Court and this Court and declaration made and directions issued by the Delhi High Court at different stages. In the impugned amendment, there is no non obstante clause. The impugned amendment introducing the proviso, therefore, cannot be treated to be a validating Act."

A distinction must be made between issuance of writ of mandamus conferring right upon a person or class of persons and the one directing implementation of the Act. However, in this case while the learned Single Judge of the High Court issued a direction that the applications filed by the members of the Scheduled Tribes should be determined by the Revenue Authorities in terms of the provisions of the 1975 Act; the same, in our opinion, did not mean

that the High Court itself had issued a writ of mandamus directing restoration of the lands in question.

As in most of the cases members of the Scheduled Tribes have not been paid compensation through their vendees in terms of the provisions of 1975 Act. They did not attain finality. If that be so, in our opinion question of invoking the decision of *Madan Mohan Pathak* (supra) in the factual matrix involved herein does not arise.

Further, it is one thing to say that a writ of mandamus shall be obeyed despite passing of a subsequent Act as it had attained finality or that it had not been brought to the notice of the Legislature, but it is another thing to say that no writ of mandamus was issued conferring rights upon the parties. Directions to implement the provisions of the Act by itself did not confer any right upon the parties. The lis has to be adjudicated upon. It did not attain finality in that sense of the term.

We may notice that scope of *Madan Mohan Pathak* (supra) has been explained in *Indian Aluminium Co.* (supra), stating :-

> *"49.* In *Madan Mohan Pathak v. Union of India,* on the basis of a settlement, bonus became payable by the LIC to its Class III and Class IV employees. In a writ, a Single Judge of the Calcutta High Court issued mandamus directing payment of bonus as provided in the settlement. During the pendency of letters patent appeal, LIC (Modification of Settlement) Act, 1976 was enacted denying bonus payable to the employees. The appeal was withdrawn. The validity of 1976 Act was challenged in this Court under Article 32 of the Constitution. A Bench of seven Judges had held that Parliament was not

aware of the mandamus issued by the court and it was declared that the 1976 Act was void and writ of mandamus was issued to obey the mandamus by implementing or enforcing the provisions of that Act and directed payment of bonus in terms of the settlement. It was pointed out that there was no reference to the judgment of the High Court in the Statement of Objects and Reasons, nor any non obstante clause referring to the judgment of the Court was made in Section 3 of the Act. Attention of Parliament was not drawn to the mandamus issued by the High Court. When the mandamus issued by the High Court became final, the 1976 Act was held invalid. Shri R.F. Nariman laid special emphasis on the observations of learned Chief Justice Beg who in a separate judgment had pointed out that the basis of the mandamus issued by the court could not be taken away by indirect fashion as observed at p. 743, C to F. From the observations made by Bhagwati, J. per majority, it is clear that this Court did not intend to lay down that Parliament, under no circumstance, has power to amend the law removing the vice pointed out by the court. Equally, the observation of Chief Justice Beg is to be understood in the context that as long as the effect of mandamus issued by the court is not legally and constitutionally made ineffective, the State is bound to obey the directions. Thus understood, it is unexceptionable. But it does not mean that the learned Chief Justice intended to lay down the law that mandamus issued by court cannot at all be made ineffective by a valid law made by the legislature, removing the defect pointed out by the court."

Madan Mohan Pathak (supra), thus, stood explained in *Indian Aluminium Co. v. State of Kerala* (supra) to be understood in the context that as long as the effect of mandamus issued by the court is not legally and constitutionally made ineffective, the State is bound to obey the directions.

Yet again, in *National Agricultural Coop. Marketing Federation of India Ltd. v. Union of India,* [(2003) 5 SCC 23], explaining Madan Mohan Pathak, it has been held :-

> **"26.** The decision is an authority for the principle that a judicial decision which has become final inter partes, cannot be set at naught by legislative action, a principle that is well entrenched. Therefore, if, as has been contended by the appellant, the High Court in 1981 had in proceedings between the appellant and the Revenue held that the appellant was entitled to the benefit of the deduction under Section 80-P(2)(a)(iii) of the Act, and the Revenue has not impugned the High Court's decision, that decision binds the parties for the assessment years in question and cannot be reopened because of the 1998 Amendment. This principle, however, does not in any way detract from the principle that the legislature may "cure" the statute so that it more correctly represents its intention. Such curative legislation does not in fact touch the validity of a judicial decision which may have attained finality albeit under the pre-amended law."

In *Mylapore Club v. State of T.N.* [(2005) 12 SCC 752], P.K. Balasubramanyan, J opined :-

> "The power to legislate is a plenary power vested in the legislature and unless those who challenge the legislation

clearly establish that their fundamental rights under the Constitution are affected or that the legislature lacked legislative competence, they would not succeed in their challenge to the enactment brought forward in the wisdom of the legislature. Conferment of a right to claim the benefit of a statute, being not a vested right, the same could be withdrawn by the legislature which made the enactment. It could not be said that the Amendment Act lacked either legislative competence or that it is unconstitutional."

Where a new Act is enacted removing the very basis on which the High Court made a preceding Act invalid; it matters not whether the same is not termed as a validating statute or not. In this case, however, in our opinion, such a question does not arise as the 1975 Act was not declared to be invalid.

In *Bakhtawar Trust v. M.D. Narayan,* [(2003) 5 SCC 298] this Court held :-

"In order to validate an executive action or any provision of a statute, it is not sufficient for the legislature to declare that a judicial pronouncement given by a court of law would not be binding, as the legislature does not possess that power. A decision of a court of law has a binding effect unless the very basis upon which it is given is so altered that the said decision would not have been given in the changed circumstances."

The reason is not far to seek. The Legislature can not over-rule a judgment but it can remove the basis on which the judgment has been rendered.

The Act was implemented both in respect of those who had two acres of land and those who had more.

The 1999 Act removes the basis for passing of the judgments so far as the applications for restoration filed by Members of the Scheduled Tribes in regard to their lands which was less than 2 hectares is concerned.

It provides that the term 'land' would mean 'only agricultural land' and the application for restoration shall lie only in case where the extent of the land exceed two hectares. (See Section 2(b) and Section 5 of 1999 Act).

Admittedly, the 1999 Act was made effective retrospectively from 24th day of January, 1986. It contains a Repeal and Savings clause. In that view of the matter, in our opinion, it was not necessary to term the statute as a validating statute containing a non-obstante clause.

It is difficult to conceive, having regard to the orders issued by the Full Bench, that the Legislature were not aware of the orders passed by the High Court. In any event the Full Bench of the High Court has stated that the directions issued by it would be subject to the new enactment.

We, therefore, are of the opinion that *Madan Mohan Pathak* (supra) has no application to the present cases.

VESTED RIGHT VIS-À-VIS ARTICLE 14

15. A vested right has been defined in P. Ramanatha Aiyar's Advanced Law Lexicon, 3rd edition, page 4888, in the following terms:

"Vested rights. Property rights.

The expression 'vested right' means an absolute or indefeasible right. It is an immediate fixed right in present or

future enjoyment in respect of property. The claim based on the vested right or settled expectation to obtain sanction cannot be set up against statutory provisions. It cannot be countenanced against public interest and conveniences which are sought to be served."

In *Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector & ETIO* [(2007) 5 SCC 447], this Court held:

"106. Furthermore, exemption from payment of tax in favour of the appellants herein would also constitute a right or privilege. The expression "privilege" has a wider meaning than right. A right may be a vested right or an accrued right or an acquired right. Nature of such a right would depend upon and also vary from statute to statute. It has been so held by this Court, while construing Section 6 of the General Clauses Act, in Gurcharan Singh *Baldev Singh v. Yashwant Singh in the following terms:* (SCC p. 432, para 3)

"The objective of the provision is to ensure protection of any right or privilege acquired under the repealed Act. The only exception to it is legislative intention to the contrary. That is, the repealing Act may expressly provide or it may impliedly provide against continuance of such right, obligation or liability."

[See also *Kusumam Hotels Private Limited v. Kerala State Electricity Board and Others* (2008) 13 SCC 213 and *State of Punjab and Others v. Bhajan Kaur and Others* (2008) 12 SCC 112]

The question as to whether the members of Scheduled Tribe had a vested right or not, may now be considered. The properties were sold by them to persons who were not the members of the

Schedule Tribes long back. Such transactions, when entered into, were valid being not barred by any statute. The vendees, thus, acquired indefeasible right. They, however, were invalidated by Section 5 of the 1975 Act. The consequence of rendition of such transactions as invalid was to restore the lands back to possession of the tribals wherefor certain procedural requirements were to be complied with. The 1975 Act, however, was only brought into force in 1986, that too with retrospective effect from 1982. In the meanwhile, many purchasers again acquired prescriptive rights. It was furthermore made effective only when the Rules were framed in 1986.

The right of restoration was of two kinds, one, in respect of agricultural land and the other in regard to non-agricultural land. We intend to deal with them separately. Indisputably, despite the 1975 Act having been brought in force and the Rules having been framed for the effective implementation thereof, the State and the Revenue Officers took no steps for implementation therefor for a long time. The process started only when a writ of mandamus was issued by the High Court. For its implementation, the substance of the proceedings has been noticed by us heretobefore. The 1975 Act and the 1986 Rules provided for several stages. The procedure laid down in the 1986 Rules consists of filing of application for restoration, calling for objections, determination of the issues, filing of appeals. Once that stage reached finality, the applicants are required to pay compensation to the land holder in terms of Section 9 of the 1975 Act which was a condition precedent therefor.

The 1975 Act contemplated raising of loan from the government by the members of the Scheduled Tribe, subject to the conditions laid down in the Rules. The procedure for grant of loan and consequent payment of compensation to the owners of land was a pre-condition for actual restoration thereof.

When, thus, loans are raised and amount of compensation is paid to the transferees, in our opinion, only then the vested right for getting back possession of the lands gets accrued and not prior thereto. We say so because the 1975 Act itself provides for a statute depriving the land holders from a right of property, which is otherwise protected by reason of Article 300-A of the Constitution of India. It is also a human right. [See *Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel and Others* (2008) 4 SCC 649 and *Union of India & Ors. v. M/s. Martin Lottery Agencies Ltd.* [(2009 4 SCALE 34]

The provisions of the 1975 Act, therefore, deserve strict construction. Although we are not required to consider the validity of the 1975 Act stricto sensu, we may place on record that even the decisions of this Court have declared similar provisions to be intra vires.

Before, however, we advert thereto, we would like to make some general observations.

No territory in the State of Kerala has been declared as Scheduled Area within the meaning of Article 244 read with the Fifth Schedule of the Constitution of India. A distinction, thus, must be borne in mind in regard to the enactments which deal with tribal areas and which do not. If a law (e.g. Scheduled Area Regulation Act) deals with the tribal areas, the same amends provisions of the

other Acts including the Limitation Act, 1963. If a person is in possession of a land, which he had obtained by reason of a valid transaction as it then was, which was subsequently sought to be invalidated, he would ordinarily receive protection by reason of doctrine of prescription provided for under the Limitation Act, by reason whereof if he has been in possession thereof for a period of more than 12 years, he would have acquired an indefeasible right thereto despite the fact that the transaction has been invalidated by a later Act. It was so held in *Manchegowda* (supra). Therein, a distinction was made between a defeasible right and an indefeasible right and this Court was concerned with a transaction which was voidable in nature.

It is, however, not a case where a transfer has been made in contravention of the terms of the grant or any law, regulation or rule governing such grant which could be legally avoided or possession thereof could be recovered through process of law. Therein, this Court clearly held:

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

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

In *Lingappa* (supra), this Court held:

"26. The impugned Act in its true nature and character is a law relating to transfers and alienations of agricultural lands by members of Scheduled Tribes in the State to persons not belonging to Scheduled Tribes. Such a law does not fall within Entries 6 and 7 in List III but is within Entry 18 in List II. We may here set out Entries 6 and 7 in List III:

"6. Transfer of property other than agricultural land; registration of deeds and documents.

7. Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural lands."

The words "other than agricultural land" in Entry 6 and the words "but not including contracts relating to agricultural land" in Entry 7 in List III have the effect of delimiting the legislative power of the Union to make a law with respect to transfers and alienations of agricultural lands or with respect to contracts in relation thereto. The power to legislate cannot be denied to the State on the ground that the provisions of Sections 3(1) and 4 which provide for annulment of transfers by tribals incidentally trench upon the existing law, namely, the Transfer of Property Act, 1882 or a law made by Parliament viz. the Specific Relief Act, 1963. The power of the State Legislature to make a law with respect to transfer and alienation of agricultural land under Entry 18 in List II carries with it not only a power to make a law placing restrictions on transfers and alienations of such lands including a prohibition thereof, but also the power to make a law to reopen such transfers and alienations. Such a law was

clearly within the legislative competence of the State Legislature being relatable to Entry 18 in List II of the Seventh Schedule."

It was observed:

"…That apart, members of Scheduled Tribes i.e. tribals who are mostly aboriginals constitute a distinct class who need a special protection of the State. Further, the question as to how far and by what stages such laws are to be implemented involves a matter of policy and therefore beyond the domain of the courts. Secondly, the Act no doubt makes a distinction between a non-tribal transferee who had diverted the lands obtained by him under a transfer from a tribal during the period from April 1, 1957 to July 6, 1974 and had put such lands to non-agricultural purpose, and other non-tribal transferees who got into possession under transfers effected by tribals during the same period but continued to use the lands for agricultural purposes. There is no question of any differential treatment between two classes of persons equally situate. When a part of the land is diverted to a non-agricultural purpose viz. the construction of a dwelling house or the setting up of an industry, the State Legislature obviously could not have made a law for annulment of transfer of such lands by tribals under Entry 18 in List II as the lands having been diverted to non-agricultural purposes ceased to be agricultural lands. In the case of such non-agricultural land, if the State Legislature made such a law it would not be effective unless it was reserved for the assent of the President and received such assent."

Therein, thus, this Court found that Sub-section (1) of Section 3 of Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 made detailed provision to strike a balance between the mutual rights and obligations of the parties, upon making of an order for restoration of such land to the members of the Scheduled Tribes.

It was furthermore held that the said Act having been placed in the Ninth Schedule of the Constitution of India, the validity thereof could not have been challenged for contravention of Articles 14, 19(1)(f) or Article 31 of the Constitution of India.

Yet again in *P. Rami Reddy and Others v. State of Andhra Pradesh and Others* [(1988) 3 SCC 433], there existed a law prohibiting transfer in the agency tract areas, viz., the Agency Tracts Interest and Land Transfer Act, 1917. Those areas were notified as Scheduled Areas after coming into force of the Constitution by reason of the Scheduled Area (Part 'A' States) Order, 1950. By reason of the power conferred on the Governor of the State by Para 5(2) of the Fifth Schedule, the regulations named as A.P. Scheduled Areas Land Transfer Regulation, 1959 were made. In the aforementioned backdrop, it was opined:

> "19…The community cannot shut its eyes to the fact that the competition between the "tribals" and the "non-tribals" partakes of the character of a 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 matter 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 a "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". The "non-tribal" economic exploiters cannot be installed on the pedestal of immunity and accorded a privileged treatment by permitting them to transfer the lands and structures, if any, raised on such lands, to "non-tribals" and make profits at the cost of the tribals. It would not only tantamount to perpetuating the exploitation and injustice, it would tantamount to placing premium on the exploitation and injustice perpetrated by the non-tribals. Thus it would be the height of unreasonableness to impose the disability only on the tribals whilst leaving out the "non-tribals". It would also be counterproductive to do so."

However, in *K.T. Huchegowda v. Dy. Commissioner* [(1994) 3 SCC 536], this Court held:

"8. On a plain reading, granted land will mean, any land granted by the Government to a person, who is a member of the Scheduled Castes or Scheduled Tribes which includes land allotted to such persons. Grant may be of different types; it may be by absolute transfer of the interest of the State

Government to the person concerned; it may be only by transfer of the possession of the land, by way of allotment, without conveying the title over such land of the State Government. If by grant, the transferee has acquired absolute title to the land in question from the State Government, then subject to protection provided by the different provisions of the Act, he will be subject to the same period of limitation as is prescribed for other citizens by the provisions of the Limitation Act, in respect of extinguishment of title over land by adverse possession. On the other hand, if the land has been allotted by way of grant and the title remains with the State Government, then to extinguish the title that has remained of the State Government by adverse possession, by a transferee on the basis of an alienation made in his favour by an allottee, the period of limitation shall be 30 years. Incidentally, it may be mentioned that some of the States in order to protect the members of the Scheduled Tribes from being dispossessed from the lands which belong to them and of which they are absolute owners, for purpose of extinguishment of their title by adverse possession, have prescribed special period of limitation, saying that it shall be 30 years. In Bihar, vide Regulation No. 1 of 1969, in Article 65 of the Limitation Act, it has been prescribed that it would be 30 years in respect of immovable property belonging to a member of the Scheduled Tribes as specified in Part III to the Schedule to the Constitution (Scheduled Tribes) Order, 1950.

9. There is no dispute that so far as the Act with which we are concerned, no special period of limitation has been prescribed, in respect of lands which have been granted to the members of

the Scheduled Castes and Scheduled Tribes with absolute ownership by the State Government. In this background, when this Court in the case of *Sunkara Rajayalakshmi v. State of Karnataka* said that the period of limitation, which has to be taken into account for the purpose of determining, whether the title has been perfected by prescription, shall be that which runs against the State Government and therefore it would be 30 years and not 12 years, has to be read in context with the lands, the ownership whereof, has not been transferred absolutely, to the members of the Scheduled Castes and Scheduled Tribes; the lands having been only allotted to them, the title remaining with the State Government. The cases where the transfer by the State Government by way of grant has been absolute, then unless there is an amendment so far the period of limitation is concerned, it is not possible to apply the special limitation of 30 years, so far such grantees are concerned, when the question to be determined, is as to whether a transferee in contravention of the terms of the grant, has perfected his title by remaining in continuous and adverse possession. The transferee, who has acquired the land from the grantee, in contravention of the terms of the grant shall perfect his title by adverse possession by completing the period of 12 years. When this Court said in its main judgment, in the case of *Manchegowda v. State of Karnataka* that in cases where granted lands had been transferred before the commencement of the Act in violation of the condition, regarding prohibition on such transfer and the transferee who had initially acquired only a voidable title, in such granted lands had perfected his title in the granted lands by prescription by

long and continuous enjoyment thereof in accordance with law before the commencement of the Act, has to be read, for purpose of determining the period of limitation in respect of lands granted with absolute ownership, to mean 12 years and grant by way of allotment without transfer of the ownership in favour of the grantee, to mean 30 years."

[See also *Papaiah v. State of Karnataka* (1996) 10 SCC 533]

The statutory provisions, therefore, must be interpreted in the light of the constitutional provisions.

The decisions of this Court, therefore, are clear and unambiguous. In a case involving members of the Scheduled Tribe living in Scheduled Area the period of limitation can be extended, but it is not permissible in respect of an area which has not been declared to be a Scheduled Area. When a person acquires an indefeasible right, he can be deprived therefrom only by taking recourse to the doctrine of Eminent Domain. If a person is sought to be deprived of an indefeasible right acquired by him, he should be paid an amount of compensation. In a case of this nature, therefore, where an amount of compensation has not actually been tendered, the vendees of the land could not be deprived of their right to be dispossessed. In that view of the matter, a distinction must be made between a case where an amount of compensation has been paid and in a case where it has not been. If a vested right has not been taken away, the question of applicability of Article 14 of the Constitution of India would not arise.

The High Court, however, proceeded to apply Article 14 of the Constitution of India on the premise that the provisions of the 1999 Act clearly seek to destroy the right conferred on Scheduled Area

by Act 31 of 1975. The approach of the High Court being not correct, the same cannot be sustained.

REASON FOR AMENDMENT

16. This brings us to the question as to whether the 1999 Act is invalid inter alia because the State was apprehensive that the assignees may offer organized resistance for implementation of the 1975 Act and the State wanted to avert a conflict between the tribals and the non-tribals. The short answer to the said question is that the State cannot shut its eyes to the ground realities. The Statement of Objects and Reasons would clearly show that the State did not take an action in a half-hearted manner. It consulted the tribal organizations. It is stated in its Counter Affidavit by the State before the High Court as under:

> "… Under the above circumstances, urgent steps were taken to have discussion with the various tribal organisations did not insist upon getting the very same land that had been alienated but would prefer to obtain an equal extent of land from the Government. Many organisations did not insist that the Act 31 of 1975 should be implemented in its original form. The Government also had serious discussions with various political parties and other concerned with tribal welfare. Discussions were also held with the present occupants of the alienated tribal lands.
>
> On the basis of the discussions and deliberations the Government thought it proper to introduce a suitable legislation which would adequately take care of the interests of the Tribals and also find a solution to the problems of landlessness and homelessness of the Tribals. Accordingly, the Kerala

Restriction on transfer by and Restoration of Land to the Scheduled Tribes Act, 1999 was introduced in the State Assembly and the same was unanimously passed by the Assembly. The Bill became an Act (Act 12 of 1999) on 20.4.1999."

If the contention of the State is correct that most of the tribal organizations did not insist upon getting the same land that they had been alienated from but would have preferred to have alternate land allotted to them by the government and as many organizations insisted that the 1975 Act may not be implemented in its original form, we think that action of the State cannot be termed to be arbitrary so as to attract the wrath of the equality clause contained in Article 14 of the Constitution of India.

While doing so, the State had taken into consideration the change in the situation by reason of passage of time. The tribals had been out of possession of their lands for decades. It was for the elected representatives of the people to determine as to whether by reason of the provisions of the 1999 Act the members of the Scheduled Tribe would face dislocation or that it would impinge on their culture connected with their lands.

The ground realities are presumed to be known to the State and if anybody raises a contrary contention, it would be for him to bring on record sufficient materials to show so as to enable the court to arrive at a conclusion that the State's action was arbitrary.

It is furthermore a well-settled principle of law that the superior court in exercise of their power of judicial review of legislation would not ordinarily determine the merit of the legislation by entering into a broad question as to whether materials placed

before the Legislature were sufficient for bringing out the legislation in question or not.

Such inquisitorial inquiry on the part of the court, in our opinion, is beyond the province of the court.

BENEFICIENT NATURE OF THE 1999 ACT VIS-A-V-S 1975 ACT

17. The 1999 Act, in our opinion, is more beneficial in nature so far as the people of the State of Kerala are concerned.

The 1975 Act came into force with retrospective effect from 1.01.1982. But, as noticed hereinbefore, the Rules were framed only on 18.10.1986. Act 12 of 1999, however, came into force on 20.04.1999 but was given a retrospective effect and retroactive operation from 24.01.1986.

We heretobelow may notice a comparative chart of the salient provisions of the two Acts:

Act 31/75 – Came into force on 01.01.1982 Pages 135 – 142	
2(b) "Immovable property" defined as including standing crops and trees. Act applies to such property	
4.Transfer of any immovable property by a tribal to a non tribal without previous consent of competent authority after commencement of the Act shall be void.	

5.Transfer of immovable property by Tribal to non tribal after 01.01.1960 shall be deemed to be invalid

6(1) The Tribal whose transfer is invalidated under Sections 4 and 5 shall be entitled to restoration of possession of the property.

Sub Section (5) provide for a remedy of appeal to the aggrieved persons to the competent authority.

7. Govt. may take Suo-moto action for restoration

11. Where possession is restored to tribal under Section 6 he shall pay to the quantum transferee the consideration received as also the value of the improvement effected by the transferee as determined by the competent authority.

12. Government may advance loans to tribal for; payment of the amount u/s.11 to be repaid in half yearly or annual instalment and to be recovered as an arrear of land revenue if kept in arrears.

8.1 Similar to section 11 of Act 31 of 75

9. Government shall provide grant to eligible tribal/liable to pay the amount under Section 8.

10. (1) Government shall assign land to landless tribal families not exceeding 40 Ares in extent in his own district within two years or extended time.

(2) If any family owns land below 40 Ares I extent Govt. to assign such extent of land as is necessary to make up 40 Ares.

11. Schedule Tribe rehabilitation and Welfare Fund to be constituted for construction of houses for tribal families and for other welfare measures.

12.Provision for legal assistance	22
Repeal of Act 31 of 1975 with usual saving clause.	

Broadly, speaking, the provisions of the 1999 Act are more beneficial to the members of the Scheduled Tribe. For determining the said question, we must take a holistic view of the matter. However, we are not oblivious of the fact that restoration in respect of non-agricultural land and to the extent of 2 acres are not contemplated by the 1999 Act. We are also not oblivious of the fact that, it would appear, on the basis of the statistics furnished by the learned Additional Advocate General before the High Court, to which we have referred to heretobefore itself that a large number of members of the Scheduled Tribe would be deprived of the benefit of restoration of their own lands constituted in forest areas.

In the counter-affidavit filed by the State, it is stated:

> "It is submitted that the Government found that Act 31 of 1975 would not really serve the purpose of ameliorating the problems of the scheduled tribes and might instead lead to law and order situation in various parts of the State. After a comprehensive study of the matter the Government passed Act 12 of 1999. The allegation that the intention of Act 12 of 1999 is other than protection of the rights of schedule tribes is incorrect and denied. A reading of all the provisions of the Act 12 of 1999 would make it clear that the legislature has kept the over all interests of the tribals and all the people of the State is general while enacting Act 12 of 1999. It is submitted that no right conferred by Act 31 of 1975 has been taken away by Act 12 of 1999. The allegation that Act 12 of 1999 is meant to

protect the right of tribals is incorrect and is denied. It is submitted that the various provisions of Act 12 of 1999 had already been delineated elsewhere in the counter affidavit and the reasons for the enactment of Act 12 of 1999 have also been explained."

Out of 4724 applications for restoration filed, 1475 applications involved transfer of less than 50 cents, 898 applications involved transfer of "extent between 50 cents and 1 acre", 904 applications covered cases of "transfer of extent between 1 and 2 acres and 1074 applications related to "transfer of extent between 2 acres and 5 acres and that only 373 applications involved cases of transfer of more than 5 acres or 2 hectares.

The State has clearly brought on record the fact that it had conducted further studies wherefrom it came to learn that about 12,000 tribal families in the State did not possess any land of their own and 30,000 families did not have any house of their own.

It is necessary, according to us, to bear in mind that the law postulates grant of compensation in a case where the right on a land is sought to be taken away. The 1975 Act postulates grant of compensation to the alienees, the amount wherefor was required to be determined by a competent authority. The amount of compensation so determined was to be paid by the members of the Scheduled Tribe to their vendees in respect whereof he was to take loan from the State. The amount of loan taken was, thus, required to be repaid. The 1999 Act, however, provides for a grant which need not be repaid.

The members of the Scheduled Tribe were further to get one acre of land from the State although they might have transferred

even 5 or 10 cents of land. In the case of a transfer made upto two acres, he is to be allotted two acres of land by the State. Whether such land is available with the State Government or not is a different question, which we intend to deal with separately. The statute also contemplates building of houses for the members of the Scheduled Tribes. It provides that the land to the extent of one acre also be provided to the landless tribals. It contemplates constitution of a rehabilitation fund.

The 1999 Act, therefore, if given a holistic view, is more beneficial to the members of the Scheduled Tribe than the 1975 Act. If the State contemplated a legislative policy for grant of more benefits to a vast section of people, taking care of not only restoration of land but those who have not transferred any land at all or otherwise landless, the statute by no stretch of imagination can be treated to be an arbitrary and an unreasonable one.

ARTICLE 21 ISSUE

18. Article 21 deals with right to life and liberty. Would it bring within its umbrage a right of tribals to be rehabilitated in their own habitat is the question? If the answer is to be rendered in the affirmative, then, for no reason whatsoever even an inch of land belonging to a member of Scheduled Tribe can ever be acquired. Furthermore, a distinction must be borne between a right of rehabilitation required to be provided when the land of the members of the Scheduled Tribe are acquired vis-à-vis a prohibition imposed upon the State from doing so at all. The question must be considered from another angle. The Scheduled Tribes are not in an agency area or Scheduled Area. The literacy rate of the tribals of Kerala is 57% which is much more than the

national average. Most of the tribal children have elementary education. In the schools and colleges of Kerala, Malayalam, Tamil or English is taught. It has been noticed by various writers that the tribal teachers have not been interacting with the students in the tribal terms and, thus, gradually the tribal students have lost respect for their language and begun to disregard their language, their culture and, thus, their own primitive way of life. [See Tribes of Kerala – Identity Crisis by Rayson K. Alex]

The learned author states:

"What is the criterion for the government to label a tribe as a "scheduled" tribe in the constitution? Has the government conducted a detailed study on the culture, traditions, their interrelationship with the place they live in, their socio-economic structures and judiciary before labeling them as "scheduled" tribes? The reason for this categorization can be attributed to their "supposed" backwardness and not their distinct identity from the dominant society of the country. Without taking into consideration aforementioned aspects of the culture of the tribes, to create "awareness" and to finally "develop" (in the narrow sense of the word) them, the tribes were forced to merge and condition themselves along the lines of the so-called "main-stream" Indian society. "When that was challenged, the ideologues of the aggressing society presented the theory of "integration" which in reality is the other side of the same coin. And now has come the final blow from the armory of the India state for the indigenous people of the country in the form of total denial of their existence in India. "India does not have indigenous population"! Thus declared

the Indian Permanent Mission in the United Nation in Geneva (Mullick et al 7).

This is not an argument made to showcase the tribes of Kerala as "scheduled tribes." Now a question of serious importance can be raised: Is there a need to uphold/preserve this indigenous culture? The outer (can be read as "other") influences have spread their roots so strong that their minds have been colonized (can be read as 'altered'). Even though the tribes carry wonderful memories of their rich past, they do not want to be in the same situation as they were in days of yore. So, the need for conservation of the tribal culture is the problem of the non-tribes, especially the researchers, scholars and activists working in this area. Intentionally or unintentionally, changes are the only constant feature of any culture. It can be observed that no culture can retain its flavor at different points of time. But the questions to be addressed to the "main-stream" and its government are: Are the tribes given freedom to accept or deny what ever they want? Are they given a free space to think, act and establish (as they used to in days of yore?)"

We may notice that in Indigenous and Tribal Populations Convention, 1957 which has been ratified by 27 countries including India contained following clauses:

"Article 11

The right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognised.

Article 12

1. The populations concerned shall not be removed without their free consent from their habitual territories except in accordance with national laws and regulations for reasons relating to national security, or in the interest of national economic development or of the health of the said populations.

2. When in such cases removal of these populations is necessary as an exceptional measure, they shall be provided with lands of quality at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. In cases where chances of alternative employment exist and where the populations concerned prefer to have compensation in money or in kind, they shall be so compensated under appropriate guarantees.

3. Persons thus removed shall be fully compensated for any resulting loss or injury.

Article 13

1. Procedures for the transmission of rights of ownership and use of land which are established by the customs of the populations concerned shall be respected, within the framework of national laws and regulations, in so far as they satisfy the needs of these populations and do not hinder their economic and social development.

2. Arrangements shall be made to prevent persons who are not members of the populations concerned from taking advantage of these customs or of lack of understanding of the laws on the part of the members of these populations to secure the ownership or use of the lands belonging to such members."

Thus, removal of the population, by way of an exceptional measure, is not ruled out. It is only subject to the condition that lands of quality at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. We may, however, notice that this Convention has not been ratified by many countries in the Convention held in 1989. Those who have ratified the 1989 Convention are not bound by it.

Furthermore, the United Nations adopted a declaration on the rights of indigenous peoples in September, 2007. Articles 3 to 5 thereof read as under:

> "Article 3
>
> Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
>
> Article 4
>
> Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.
>
> Article 5
>
> Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State."

It is now accepted that the Panchasheel doctrine which provided that the tribes could flourish and develop only if the State interfered minimally and functioned chiefly as a support system in view of passage of time is no longer valid. Even the notion of autonomy contained in the 1989 Convention has been rejected by India. However, India appears to have softened its stand against autonomy for tribal people and it has voted in favour of United Nations declaration on the rights of indigenous people which affirms various rights to autonomy that are inherent in the tribal peoples of the world. This declaration, however, is not binding.

This Court furthermore in *Narmada Bachao Andolan v. Union of India and Others* [(2000) 10 SCC 664] while considering the validity of acquisition of lands by the State of Madhya Pradesh for a project known as Sardar Sarovar Project (SSP) by constructing a dam on river Narmada as a result whereof the residence of tribals in various States, viz., Madhya Pradesh, Gujarat, Maharashtra and Rajasthan were affected, opined as under:

> "62. The displacement of the tribals and other persons would not per se result in the violation of their fundamental or other rights. The effect is to see that on their rehabilitation at new locations they are better off than what they were. At the rehabilitation sites they will have more and better amenities than those they enjoyed in their tribal hamlets. The gradual assimilation in the mainstream of the society will lead to betterment and progress."

For the purpose of going into the question with regard to the adjudication of the water dispute regarding the inter-State River Narmada and the river valley thereof in terms of the provisions of

the inter-State Water Disputes Act, the award inter alia provided for relief and rehabilitation stating that no submergence of an area would take place unless the oustees are rehabilitated.

This Court referred to Article 12 of the ILO Convention No. 107 holding:

> "58. The said article clearly suggested that when the removal of the tribal population is necessary as an exceptional measure, they shall be provided with land of quality at least equal to that of the land previously occupied by them and they shall be fully compensated for any resulting loss or injury. The rehabilitation package contained in the award of the Tribunal as improved further by the State of Gujarat and the other States prima facie shows that the land required to be allotted to the tribals is likely to be equal, if not better than what they had owned."

Noticing that construction of a dam is of utmost importance for development of the country as it plays an important role in providing irrigation for food security, domestic and industrial water supply, hydroelectric power and keeping flood waters back. It repelled a submission that the execution of SSP without a comprehensive assessment and evaluation of its environmental impact and a decision regarding its acceptability would be in violation of the rights of the affected people under Article 21 of the Constitution of India stating that requisite environmental clearance had been taken opining that the same had been granted on due application of mind. It took into consideration the question of relief and rehabilitation, consequent upon the displacement of people, holding:

"151. The displacement of the people due to major river valley projects has occurred in both developed and developing countries. In the past, there was no definite policy for rehabilitation of displaced persons associated with the river valley projects in India. There were certain project-specific programmes for implementation on a temporary basis. For the land acquired, compensation under the provisions of the Land Acquisition Act, 1894 used to be given to the project-affected families. This payment in cash did not result in satisfactory resettlement of the displaced families. Realising the difficulties of displaced persons, the requirement of relief and rehabilitation of PAFs in the case of Sardar Sarovar Project was considered by the Narmada Water Disputes Tribunal and the decision and final order of the Tribunal given in 1979 contains detailed directions in regard to acquisition of land and properties, provision for land, house plots and civic amenities for the resettlement and rehabilitation of the affected families. The resettlement policy has thus emerged and developed along with the Sardar Sarovar Project."

This Court opined that where two views are permissible, the court ordinarily would not sit in appeal over a policy decision adopted by the government. Regarding displacement of people on proposed project, it was held:

"…It is not fair that tribals and the people in undeveloped villages should continue in the same condition without ever enjoying the fruits of science and technology for better health and have a higher quality of lifestyle. Should they not be encouraged to seek greener pastures elsewhere, if they can

have access to it, either through their own efforts due to information exchange or due to outside compulsions. It is with this object in view that the R&R plans which are developed are meant to ensure that those who move must be better off in the new locations at government cost. In the present case, the R&R packages of the States, specially of Gujarat, are such that the living conditions of the oustees will be much better than what they had in their tribal hamlets."

As regards the question of necessity to balance the loss of forest because of activities carried on therein and construction of a dam, it was held:

"242. The loss of forest because of any activity is undoubtedly harmful. Without going into the question as to whether the loss of forest due to river valley project because of submergence is negligible, compared to deforestation due to other reasons like cutting of trees for fuel, it is true that large dams cause submergence leading to loss of forest areas. But it cannot be ignored and it is important to note that these large dams also cause conversion of wasteland into agricultural land and make the area greener. Large dams can also become instruments in improving the environment, as has been the case in western Rajasthan, which transformed into a green area because of Indira Gandhi Canal which draws water from Bhakra Nangal Dam. This project not only allows the farmers to grow crops in deserts but also checks the spread of Thar Desert in the adjoining areas of Punjab and Haryana."

It is of some significance to note that this Court in *Balco Employees' Union (Regd.) v. Union of India and Others* [(2002) 2

SCC 333] in regard to the decision of this Court in Samatha v. State of A.P. [(1997) 8 SCC 191], by drawing a necessary distinction between an area which is covered by Fifth Schedule of the Constitution and an area which is not, opined as under:

> "71. While we have strong reservations with regard to the correctness of the majority decision in Samatha case, which has not only interpreted the provisions of the aforesaid Section 3(1) of the A.P. Scheduled Areas Land Transfer Regulation, 1959 but has also interpreted the provisions of the Fifth Schedule of the Constitution, the said decision is not applicable in the present case because the law applicable in Madhya Pradesh is not similar or identical to the aforesaid Regulation of Andhra Pradesh. Article 145(3) of the Constitution provides that any substantial question of law as to the interpretation of the provisions of the Constitution can only be decided by a Bench of five Judges. In Samatha case, it is a Bench of three Hon'ble Judges who by majority of 2:1, interpreted the Fifth Schedule of the Constitution. However, what is important to note here is, as already observed hereinabove, that the provisions of the Madhya Pradesh Land Revenue Code, 1959 and Section 165, in particular, are not in pari materia with the aforesaid Section 3 of the Andhra Pradesh Regulation."

Furthermore, the cut-off date in terms of the 1975 Act was 1.01.1960. Any transaction which had taken place between 1960 and 1975 and thereafter had been declared invalid. Admittedly, even after the provisions thereof having been given full effect, the

members of the Scheduled Tribe had not been put in possession of their own land for decades.

Furthermore, we have noticed hereinbefore that the members of the Scheduled Tribe are educated and we can safely presume that most of them are serving various institutions in the State of Kerala and/ or in other parts of India.

Indisputably, the question of restoration of land should be considered having regard to their exploitation and rendering them homeless from the touchstone of Article 46 of the Constitution of India. For the aforementioned purpose, however, it may be of some interest to consider that the insistence of autonomy and the view of a section of people that tribals should be allowed to remain within their own habitat and not be allowed to mix with the outside world would depend upon the type of Scheduled Tribe category in question. Some of them are still living in jungle and are dependant on the products thereof. Some of them, on the other hand, have become a part of the mainstream. The difference between Scheduled Tribes of North-East and in some cases the Islands of Andaman and Nicobar, on the one hand, and of those who are on the highlands and plains of the Southern regions must be borne in mind.

We are satisfied that the legislature of Kerala kept in view the necessity of protecting the interest of the small land holders who were in possession and enjoyment of property which had belonged to tribal community and at the same time ensured that the tribals are not thrown out of their land and rendered homeless. Having regard to the studies conducted by the State Government and as a balance of interest between tribals and non-tribals which has been

sought to be achieved, the provisions of the 1999 Act are intra vires.

In the counter-affidavit filed by the State, it is stated:

"…It is no doubt true that Act 31 of 1975 was integrated in the light of the non-tribals depriving tribals of their land and the tribals being exploited. However, over the years considering the population of land ratio even the non-tribals occupying land which was once in possession of the tribals stood to have their livelihood seriously jeopardise by total implementation of Act 31 of 1975. Ultimately, the Government had to consider all the aspects of the matter and the Government found that the optimum solution would be to bring a new legislation. It is in view of this that Act 12 of 1999 has been passed by the State legislature…"

NON-AVAILABILITY OF THE LAND

19. Mr. Iyer, learned counsel would contend that the State of Kerala is striving hard for making the lands available to the tribal people. The learned counsel contended that the State has approached the Forest Bench of this Court for this purpose. We are, however, not concerned therewith. Keeping in view the promises made by the 1999 Act, it is obligatory on the part of the State to provide the land meant for the members of the Scheduled Tribe. If they do not have sufficient land, they may have to take recourse to the acquisition proceedings but we are clear in our mind that the State in all situations will fulfill its legislative promise failing which the persons aggrieved would be entitled to take recourse to such remedies which are available to them in law.

We must also make it clear that while allotting land to the members of the Scheduled Tribe, the State cannot and must not allot them hilly or other types of lands which are not at all fit for agricultural purpose. The lands, which are to be allotted, must be similar in nature to the land possessed by the members of Scheduled Tribe. If in the past, such allotments have been made, as has been contended before us by the learned counsel for the respondent, the State must allot them other lands which are fit for agricultural purposes. Such a process should be undertaken and completed as expeditiously as possible and preferably within a period of six months from date.

EFFECT OF INVALIDATING THE ACT AND CONSEQUENTLY REVIVING OF THE OLD ACT

20. Whether striking down of an enactment as unconstitutional would result in automatic revival of an earlier Act which has been repealed? The High Court wherefor, as noticed hereinbefore, has struck down Section 22 of 1999 Act providing for repeal of 1975 Act. On the aforesaid premise it was held that the effect must be given to the right accrued under the 1975 Act.

Sections 6(1) and 7 of the General Clauses Act, 1897, which are relevant for this purpose, read as under :-

"6. Effect of repeal.

Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

7. Revival of repealed enactments -

(1) In any (Central Act) or Regulations made after the commencement of this Act, it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose.

This section applies also to all (Central Acts) made after the third day of January, 1968 and to all Regulations made on or after the fourteenth day of January, 1887."

In our opinion, there exists a distinction between a statutory rule and a Legislative Act. The Legislature did not want a vacuum

to be created. The 1999 Act was enacted repealing the 1975 Act only for certain purposes. Section 22(2) of the 1999 Act upheld certain actions taken under the 1975 Act as if they had been taken in terms thereof. The procedure for determining the rights and obligations of the parties by the Revenue Officers, under both the Acts, are more or less the same.

We may notice Sections 19 and 22 of 1999 Act, which are relevant. They read :-

> "19. Saving of other laws. – The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force regulating any of the matters dealt with in this Act, except to the extent provided in this Act."
>
> "22. Repeal and saving.-
>
> (1) The Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975 (31 of 1975) is hereby repealed.
>
> (2) Notwithstanding the repeal of the said Act, all orders issued by the competent authority or the Revenue Divisional Officer, so far as they are not inconsistent with the provisions of this Act shall be deemed to have been made under the corresponding provisions of this Act and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under this Act. Every proceedings pending before a Court on a complaint under Section 14 of the said Act shall be deemed as a proceeding under the corresponding provisions of this Act and shall be continued accordingly."

It is, therefore, evident that only those laws which are in derogation of the provisions of the 1999 Act would stand repealed.

We may in this connection notice certain decisions relied upon by Mr. Krishnan.

A.T.B. Mehtab Majid & Co. v. State of Madras, [AIR 1963 SC 928 = [1963] Supp (2) SCR 435] was a case of substitution of an old rule by a new rule. It, therefore, ceased to exist and did not automatically get revived when new rule was held to be invalid.

We are, however, dealing with a Legislative Act, validity whereof was determined in the light of constitutional provisions.

In *B.N. Tiwari v. Union of India and others,* [[1965] 2 SCR 421], this Court was again dealing with a statutory rule. It was held that the old rule did not revive opining :-

> "When therefore this Court struck down the carry forward rule as modified in 1955 that did not mean that the carry forward rule of 1952 which had already ceased to exist, because the Government of India itself cancelled it and had substituted a modified rule in 1955 in its place, could revive."

However, the legal position was made clear by a Three Judge bench of this Court in *West U.P. Sugar Mills v. State of U.P.,* [(2002) 2 SCC 645] whereupon also the learned counsel had placed reliance, stating:-

> **"18.** A perusal of Section 20 shows that several provisions of the Uttar Pradesh General Clauses Act have been made applicable in relation to statutory instruments including the statutory Rules issued under any Uttar Pradesh Act. However, Section 6-C does not find place in sub-section (2) of Section

20 of the U.P. General Clauses Act. In the absence of application of Section 6-C to the statutory instrument, including the statutory rule, which is the case before us, the contention of the respondents deserves to be rejected. Since Section 6-C of the U.P. General Clauses Act has not been applied to the statutory rule framed by the Government of Uttar Pradesh, the substituted rule after it became inoperative, the old Rule 49 would not revive."

The aforementioned observations were, thus, made having regard to the fact that Section 6-C of the U.P. General Clauses Act had not been applied to the statutory Rules, which reads as under :-

"6-C. Repeal or expiration of law-making textual amendments in other laws.—(1) Except as provided by sub-section (2), where any Uttar Pradesh Act amends the text of any Uttar Pradesh Act or Regulation by the express omission, insertion or substitution of any matter, the amending enactment is subsequently repealed, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.

(2) Where any such amendment of text is made by any temporary Uttar Pradesh Act or by an Ordinance or by any law made in exercise of the power of the State Legislature by the President or other authority referred to in sub-clause (a) of clause (1) of Article 357 of the Constitution, and such Act, Ordinance or other law ceases to operate without being re-enacted (with or without modifications) the amendment of text made thereby shall also cease to operate."

However, the Bench opined:-

"15. It would have been a different case where a subsequent law which modified the earlier law was held to be void. In such a case, the earlier law shall be deemed to have never been modified or repealed and, therefore, continued to be in force. Where it is found that the legislature lacked competence to enact a law, still amends the existing law and subsequently it is found that the legislature or the authority was denuded of the power to amend the existing law, in such a case the old law would revive and continue. But it is not the case here."

Mohd. Shaukat Hussain Khan v. State of A.P., [(1974) 2 SCC 376] is a case where the statute was modified and a different view was taken.

But the principle laid down therein has been held to be inapplicable in *Indian Express Newspapers v. Union of India,* [(1985) 1 SCC 641]

"106. The rule in *Mohd. Shaukat Hussain Khan v. State of A.P.* is inapplicable to these cases. In that case the subsequent law which modified the earlier one and which was held to be void was one which according to the Court could not have been passed at all by the State Legislature. In such a case the earlier law could be deemed to have never been modified or repealed and would, therefore, continue to be in force. It was strictly not a case of revival of an earlier law which had been repealed or modified on the striking down of a later law which purported to modify or repeal the earlier one. It was a case where the earlier law had not been either modified or repealed effectively."

Repeal of a statute, it is well known, is not a matter of mere form but one of substance. It, however, depends upon the intention of the legislature. If by reason of a subsequent statute, the legislature intended to abrogate or wipe off the former enactment, wholly or in part, then it would be a case of total or pro tanto repeal. If the intention was merely to modify the former enactment by engrafting an exception or granting an exemption, or by adding conditions, or by restricting, intercepting or suspending its operation, such modification would not amount to a repeal.

In *Southern Petrochemical Industries* (supra), the subsequent Act did not contain the words "unless a different intention appears". It was held that the later Act was not different from the earlier Act.

This Court is required to assume that the Legislature did so deliberately.

In this case, however, the repealing clause is clear and unambiguous. We, therefore, cannot accept the submission of Mr. Dayan Krishnan.

AGRICULTURAL AND NON-AGRICULTURAL LAND

21. Classification between agricultural and non-agricultural land is a valid one. It is, however, accepted that all forest areas comprise of the agricultural land. The State has admittedly no legislative competence to enact a legislation in exercise of its power of Entry No. 49, List II of the Seventh Schedule of the Constitution of India in relation to non-agricultural land. Such a power has been noticed hereinbefore. It exists only in terms of Entry 6, List III of the Seventh Schedule of the Constitution of India. While enacting the 1999 Act, the State could not have deprived the persons who hold non-agricultural land, having

enacted the 1975 Act and, thus, could not have repealed a portion thereof by raising the following contention:

> "…If in a given situation a tribal possess non-agricultural land that only indicates that though the person is a tribal by birth he has come a long way from the way of Scheduled Tribe and has acquired the trappings of non tribals and thereafter has come to own immovable property other than the agricultural land. The exploitation of the tribals has studied would indicate (sic) has always taken place by deprivation of the agricultural land of the tribals…"

Once they have made an enactment, the legislative intent is clear and unambiguous, viz., such exploitation was possible also in so far as non-agricultural lands are concerned. Such a right conferred on the owners of the non-agricultural land, therefore, could not have taken away without payment of compensation. We, therefore, are of the opinion that to that extent the 1975 Act would continue to be applied. The State has no legislative competence to repeal that portion of the 1975 Act.

For the reasons aforesaid, Civil Appeal Nos. 104-105 of 2001 and 899 of 2001 are allowed in part to the extent mentioned above.

In view of our judgment in Civil Appeal Nos. 104-105 of 2001 and 899 of 2001, no orders are called for in Civil Appeal No.7079 of 2001. No costs