A PAPAIAH

v.

STATE OF KARNATAKA AND ORS.

AUGUST 23, 1996

B [K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Constitution of India, 1950 : Articles 39(b) and 46.

Scheduled Castes and Scheduled Tribes—Weaker Sections of
C Society—Duty of State to prevent exploitation—Right to economic justice is a fundamental right.

Karnataka Scheduled Castes & Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 : Sections 4 and 5.

D *Mysore Land Revenue Code : Rule 43(8).*

Contract Act, 1872 : Section 23.

Scheduled Castes and Scheduled Tribes—Restriction on transfer of land by Respondents 4 and 5 assigned five acres of agricultural land under
E *Rule 43 (8)—Appellant purchasing land from assignees after the expiry of ten years from the date of assignment by the Government—Application filed by assignees for restoration of land allowed by competent authority and confirmed by Appellate authority—Appeal preferred before Supreme Court—Held alienation made by respondent—Assignees was void—Assignment of land having been made in furtherance of constitutional goal, any alienation, in its*
F *contravention, would be not only in violation of the constitutional policy but also opposed to public policy under Section 23 of the Contract Act—As the alienation was void purchaser does not get any valid right, title or interest thereunder—Plea of adverse possession against the State held not maintainable—Assignee was not estopped from challenging the sale as there is no*
G *estoppel against the statute.*

K.T. Huchegowda **v.** *Deputy Commissioner & Ors.*, **[1994] 3 SCC 536, held inapplicable.**

R. Chandevarappa Etc. Etc. **v.** *State of Karnataka & Ors. Etc. Etc.*,
H **[1995] 5 SCALE 620, relied on.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 11933 of 1996. A

From the Judgment and Order dated 19.9.90 of the Karnataka High Court in W.A. No. 494 of 1990.

P.R. Ramasesh, S.K. Kulkarni and Surya Kant for the Appellant. B

Kapil Sibal, V. Laxminarayan and E.C. Vidyasagar for the Respondents.

The following Order of the Court was delivered : C

Leave granted.

We have heard learned counsel on both sides.

This appeal by special leave arises from the order of the High Court of Karnataka dated 19.9.1990 made in WA No. 494/90. The admitted facts D are that the respondents 4 and 5, by name Doddaramaih and Chikkaramaiah, sons of late Gurappa of Bangalore were granted five acres of agricultural land under Rule 43 (8) of the Mysore Land Revenue Code on February 13, 1940 for use and enjoyment of the Government land. Rule 43(8) reads as under : E

> "Occupancies granted to applicants belonging to Depressed Classes under Rule 43(5) above and those granted by Government free of upset price or reduced upset price to poor and landless people of other communities or to religious charitable institutions, shall not be alienated and the grantees shall execute Mutchalikas in the F form prescribed by Government. This shall not, however, prevent lands granted to Depressed classes under Rule 43(5) being accepted as security for any loan which they may wish to obtain from Government or from a Co-operative Society for the *bonafide* purposes of improving the land". G

A reading of the said rule would indicate that with a view to augment the economic conditions of the Scheduled Castes, Scheduled Tribes and other weaker sections of the society, Government may assign the land to them or to cooperative societies composed of them. It is not in dispute that the appellant had purchased the land from the assignees under a registered H

A sale deed on December 19, 1958. The Karnataka Legislature enacted Karnataka Scheduled Castes & Schedules Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (for short, the "Act") declaring alienation by the assignee-Schedules Castes and Schedules Tribes, as void and inoperative. Procedure has been prescribed for restoration of the lands to the B assignees or if they are not available, the land resumed be assigned to eligible persons from those classes. In furtherance thereof, the respondents 4 & 5 filed an application under Sections 4 & 5 of the Act before the competent authority on April 22, 1985 for restoration of the land. The competent authority allowed the application which was confirmed on appeal and, therefore, the writ petitions came to be dismissed. Thus this C appeal by special leave.

Sri P.R. Ramasesh, learned counsel for the appellant contended that there was no prohibition as against the appellant, since he obtained the title after the expiry of ten years from the date of the assignment by the D Government. The appellant had perfected title by adverse possession. Therefore, the Act is inapplicable to such a situation. In support of his contention, he sought to place reliance on the judgment of this Court in *K.T. Huchegowda* v. *Deputy Commissioner & Ors.*, [1994] 3 SCC 536.

Sri Kapil Sibal, learned senior counsel appearing for the respondents, E contended that the appellant had not pleaded adverse possession as against the State. He came into possession by virtue of a title obtained from respondents 4 and 5. The sale is void and against the public policy. His contention of adverse possession against respondents, though was raised before the primary authority and the appellate authority and was negatived F the same, was not canvassed before the High Court. The only contention raised before the High Court was as to the estoppel which was rightly negatived. Under those circumstances, the ratio of *Hochegowda* case (supra) has no application. In support of his contention, he placed reliance on other judgment of this Court in the case of *R. Chandevarappa Etc. Etc.* v. *State of Karnataka & Ors.*, Etc. Etc., [1995] 5 SCALE 620.

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In view of the rival contentions raised on both sides, the questions that arise for consideration are: whether the respondents 5 and 6 who have alienated the land to the appellant are estopped to challenge the sale and whether the sale is valid and also whether appellant perfected his title by H adverse possession as against the State?

It is seen that Article 46 of the Constitution, in terms of its Preamble, enjoins upon the State to provide economic justice to the Scheduled Castes, Scheduled Tribes and other weaker sections of the society and to prevent their exploitation. Under Article 39(b) of the Constitution, the State is enjoined to distribute its largess, land, to sub-serve the public good. The right to economic justice to the Scheduled Castes, Scheduled Tribes and other weaker sections is a fundamental right to secure equality of status, opportunity and liberty. Economic justice is a facet of liberty without which equality of status and dignity of person are teasing illusions. In rural India, land provides economic status to the owner. The State, therefore, is under constitutional obligation to ensure to them opportunity giving its largess to the poor to augment their economic position. Assignment of land having been made in furtherance thereof, any alienation, in its contravention, would be not only in violation of the constitutional policy but also opposed to public policy under Section 23 of the Contract Act. Thereby, any alienation made in violation thereof is void and the purchaser does not get any valid right, title or interest thereunder. It is seen that Rule 43 (a) specifically prohibits alienation of assigned land. It does not prescribe any limitation of time as such. However, it is contended that the appellant has obtained land by way of sale in 1958 long before the Act came into force and thereby he perfected his title by adverse possession. We find no force in contention. This Court had considered this question in similar circumstances in *R. Chandevarappa's* case and had held thus :

> "The question then is whether the appellant has perfected his title by adverse possession. It is seen that a contention was raised before the Assistant Commissioner that the appellant having remained in possession from 1968, he perfected his title by adverse possession. But the crucial facts to constitute adverse possession have not been pleaded. Admittedly the appellant came into possession by a derivative title from the original grantee. It is seen that the original grantee has no right to alienate the land. Therefore, having come into possession under colour of title from original grantee if the appellant intends to plead adverse possession as against the State, he must disclaim his title and plead his hostile claim to the knowledge of the State and that the State had not taken any action thereon within the prescribed period. Thereby, the appellant's possession would become adverse. No such stand was taken nor evidence has been adduced in this behalf. The

A counsel in fairness, despite his research, is unable to bring to our notice any such plea having been taken by the appellant."

The ratio thereof squarely applies to the facts in this case.

In *K.T. Huchegowda's* case (supra) neither this question was considered nor the validity of the Rule has been gone into. Therein, this Court had gone into the question of adverse possession as against the purchaser but not as against the State. Unless the purchaser derives valid title, the question of title does not arise. If he remained to be in possession in his own right *de hors* the title, necessarily he had to plead and prove the date from which he disclaimed his title and asserted possessory title as against the State and perfected his possession to the knowledge of the real owner, viz., the State, in this case. Such a plea was neither taken nor argued nor was any evidence adduced in this behalf. The plea of adverse possession as against the State does not arise even otherwise as the proceedings were laid before the expiry of a period of 30 years. The question of estoppel against the respondent does not arise as the Act voids the sale and thus there would be no estoppel against the Statute.

The appeal is accordingly dismissed. No costs.

T.N.A. Appeal dismissed.