

A STATE OF RAJASTHAN AND ORS.
v
AANJANEY ORGANIC HERBAL PVT. LTD
(Civil Appeal Nos. 6741-6742 of 2012)

B SEPTEMBER 20, 2012

[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

Rajasthan Tenancy Act, 1955:

C s.42(b) - Beneficial legislation to protect the interest of the
members of Scheduled Caste and Scheduled Tribe - General
restrictions on sale, gift and bequest of the interest of
Scheduled Caste and Scheduled Tribe, in the whole or part
of their holding - Object and effect of - Held: The reason for
D such general restrictions is not only to safeguard the interest
of the members of Scheduled Caste and Scheduled Tribe,
but also to see that they are not being exploited by the
members of non-Scheduled Caste and Scheduled Tribe -
However, at times, s.42(b) may go against the interest of the
E members of Scheduled Caste / Scheduled Tribe as well -
There may be several situations where they intend to sell the
property for purposes like marriage of son/daughter or to
purchase a better property etc., but may not get a better
competitive price, if the sale is made only among the
F members of Scheduled Caste / Scheduled Tribe - Provisions
have been made in certain legislations enabling the
members of Scheduled Caste and Scheduled Tribe to sell
their lands to members of non-Scheduled Caste/Scheduled
Tribe, on getting permission from the prescribed authority -
Such a provision may be sometimes helpful to the members
G of Scheduled Caste / Scheduled Tribe to get a better price
for their land but it is for the legislature to incorporate
appropriate provision in the Rajasthan Tenancy Act.

s.42(b) - Transfer of land from a member of Scheduled

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*Caste to a juristic person, other than Scheduled Caste - A
Validity - Expression 'person' used in s.42(b) - Meaning of -
Property purchased by respondent-private company from
members of Scheduled Caste - Challenged as void, in view
of s.42(b) - High Court held that respondent-private company
being a juristic person, the sale effected by a member of B
Scheduled Caste to a juristic person, which does not have a
caste, is not hit by s.42 - Held: The reasoning of the High
Court is untenable and gives a wrong interpretation to the
provision - The expression 'person' used in s.42(b) can only C
be a natural person and not a juristic person, otherwise, the
entire purpose of that section will be defeated - The legislature
clearly wanted to avoid a situation where respondent-company
can purchase land from Scheduled Caste / Scheduled Tribe
and then sell it to a non-Scheduled Caste and Scheduled D
Tribe - A thing which cannot be done directly cannot be done
indirectly over-reaching the statutory restriction - The property
purchased by respondent from the members of Scheduled
Caste was void being hit by s.42(b) and was thus rightly denied
mutation in the Revenue records - The State can, therefore, E
re-possess the lands and return the lands to the original
owners who are members of the Scheduled Caste - General
Clauses Act, 1897 - s.3(42) - Constitution of India, 1950 -
Articles 341 and 342.*

**The respondent is a private limited company. It F
purchased land belonging to the members of Scheduled
Caste vide a registered sale deed dated 26.9.2005. An
application was preferred by the respondent before the
Revenue Authorities for mutation of the property. The
same was refused on basis of a circular dated 19.11.2005,
which stated that mutation could be effected only if the G
transfer was between the members of Scheduled Caste/
Scheduled Tribe, as the case may be. Since the
application for mutation was refused, the respondent filed
Writ Petition which was allowed by a single Judge.**

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A Aggrieved by the same, the State preferred an appeal before the Division Bench which was dismissed.

B The question which arose for consideration in the instant appeal was whether the transfer of land from a member of Scheduled Caste to a juristic person, other than Scheduled Caste, is void, in view of the provisions of Section 42(b) of the Rajasthan Tenancy Act, 1955.

C The respondent-company pleaded that the expression 'person', as such, is not defined in the Rajasthan Tenancy Act, 1955 and, therefore, one has to go by the definition of 'person' under the General Clauses Act, 1987, and, if so read along with Section 3(42) of the General Clauses Act, the expression 'person' used in clause (b) of Section 42 of the Rajasthan Tenancy Act takes in a juristic person as well and, therefore, if a member of Scheduled Caste sells his property to a juristic person, the sale cannot be declared as void, since a juristic person has no caste.

E The State Government, on the other hand, contended that one cannot read Section 3(42) of the General Clauses Act into Section 42(b) of the Rajasthan Tenancy Act, out of context; and that the expression 'person' used in Section 42(b) of the Rajasthan Tenancy Act is a natural person and not a juristic person and if the transfer is by a member of Scheduled Caste or Scheduled Tribe to a person who is not a member of Scheduled Caste or Scheduled Tribe, then such a transfer is void under Section 42 of the Rajasthan Tenancy Act.

G Allowing the appeals, the Court

H HELD: 1.1. The Rajasthan Tenancy Act, 1955 is a beneficial legislation which takes special care to protect the interest of the members of Scheduled Caste and Scheduled Tribe. Section 42 provides some general

restrictions on sale, gift and bequest of the interest of Scheduled Caste and Scheduled Tribe, in the whole or part of their holding. The reason for such general restrictions is not only to safeguard the interest of the members of Scheduled Caste and Scheduled Tribe, but also to see that they are not being exploited by the members of non-Scheduled Caste and Scheduled Tribe. [Para 8] [1155-D-E]

1.2. Article 341 of the Constitution empowers the President by public notification to specify the castes, races or tribes which shall, for the purpose of the Constitution, be deemed to be Scheduled Castes in relation to that State or Union Territory etc. Article 342 of the Constitution deals with 'Scheduled Tribes'. The expressions 'Scheduled Castes' and "Scheduled Tribes', as found in Section 42(b) of the Act have to be read along with the constitutional provisions and, if so read, the expression 'who is not a member of the Scheduled Caste or Scheduled Tribe' would mean a person other than those who has been included in the public notification as per Articles 341 and 342 of the Constitution. The expression 'person' used in Section 42(b) of the Act therefore can only be a natural person and not a juristic person, otherwise, the entire purpose of that section will be defeated. If the contention of the respondent-company is accepted, it can purchase land from Scheduled Caste / Scheduled Tribe and then sell it to a non-Scheduled Caste and Schedule Tribe, a situation the legislature wanted to avoid. A thing which cannot be done directly can be not done indirectly over-reaching the statutory restriction. [Paras 12, 13 and 14] [1156-G; 1157-C-G-H; 1158-A-B]

1.3. The reasoning of the High Court that the respondent being a juristic person, the sale effected by a member of Scheduled Caste to a juristic person, which

A does not have a caste, is not hit by Section 42 of the Act,
 is untenable and gives a wrong interpretation to the
 above mentioned provision. The Revenue Authorities
 rightly refused the mutation as per circular dated
 9.11.2005. Condition No. 7(2) of the circular was rightly
 B invoked by the Revenue Authorities in denying mutation.
 The above mentioned condition makes it amply clear that
 the mutation on the basis of registration shall be made
 only in the name of that particular person/vendee who is
 a member of Scheduled Caste/Scheduled Tribe and not
 C in the name of any firm/society/company/legal institution
 wherein a person is office-bearer or member. When the
 above principles are applied to the transfer of land in
 question, it is clear that the sale deed effected on
 26.9.2005 was void and therefore rightly denied mutation
 D in Revenue records. Property, therefore purchased by
 the respondent from the members of Scheduled Caste
 vide sale deed dated 26.9.2005 and other sale deeds,
 therefore are void since hit by Section 42(b) of the Act and
 it is so declared. The State can, therefore, re-possess the
 lands and return the lands to the original owners who are
 E members of Scheduled Caste. [Paras 15, 16 and 17]
 [1158-C-E; G-H; 1159-A-C]

State of Maharashtra v. Indian Oil Corporation (2004) 5
 WLC (Raj.) 703 - referred to.

F 2. However, at times, Section 42(b) of the Rajasthan
 Tenancy Act may go against the interest of the members
 of Scheduled Caste / Scheduled Tribe as well. There may
 be several situations where they intend to sell the
 G property for purposes like marriage of son/daughter or
 to purchase a better property and so on, but in that event
 sometimes they may not get a better competitive price, if
 the sale is made only among the members of Scheduled
 Caste / Scheduled Tribe. One has come across
 H legislations where provisions are made enabling them to

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sell their lands to the members of non-Scheduled Caste/
Scheduled Tribe, on getting permission from the
prescribed authority. Such a provision may be sometimes
helpful to the members of Scheduled Caste / Scheduled
Tribe to get a better price for their land but it is for the
legislature to incorporate appropriate provision in the
Rajasthan Act. [Para 18] [1159-C-F]

Case Law Reference:

(2004) 5 WLC (Raj.) 703 referred to Para 4

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.
6741-6742 of 2012.

From the Judgment and Order dated 26.09.2008 of the
High Court of Judicature for Rajasthan at Jodhpur in DB Civil
Special Appeal (Writ) No. 896 of 2008.

WITH

C.A. No. 6743 of 2012.

Dr. Manish Singhvi, AAG, Irshad Ahmad for the Appellants.

P.P. Choudhary, Rajesh K. Bhardwaj, Dr. Vipin Gupta for
the Respondent.

The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. Leave granted.

2. We are, in this case, called upon to decide the question
as to whether the transfer of land from a member of Scheduled
Caste to a juristic person, other than Scheduled Caste, is void,
in view of the provisions of Section 42(b) of the Rajasthan
Tenancy Act, 1955 (for short 'the Act').

3. The High Court of Rajasthan has answered the above
question in several cases holding that such a transfer would not
be hit by the above mentioned provision, since the expression

A 'person' would not take in a 'juristic person' and that juristic person does not have a caste and, therefore, any transfer made by a Scheduled Caste person would not be hit by Section 42(b) of the Act.

4. In the impugned judgment, reliance has been placed on an earlier judgment of the High Court of Rajasthan in *State of Rajasthan v. Indian Oil Corporation* 2004 (5) WLC (Raj.) 703, which held as follows:

"6. It goes without saying that though the Indian Oil Corporation is a juristic person but it does not have a caste. Thus the sale in favour of Indian Oil Corporation by a member of Scheduled Caste is not covered by the provisions of section 42 of the Rajasthan Tenancy Act. Thus taking into totality of the facts and circumstances, we feel that it is not a fit case where the delay of 480 days should be condoned. The special leave is rejected."

5. The judgment in *IOC* (supra) was challenged before this Court by the State of Rajasthan in C.C. No. 19386 of 2010 with an application for condonation of delay of 2798 days. This Court dismissed the petition with costs vide order dated 4.1.2011, since the delay was not properly explained.

6. We are informed that since the special leave petition, arising out of CC No. 19386 of 2010, was dismissed, the judgment in *IOC* (supra) is treated as law so far as the State of Rajasthan is concerned and being followed in various other similar cases. It is, therefore, necessary to examine the various legal issues raised before us so as to render an authoritative pronouncement on the question posed before us.

7. The respondent is a private limited company registered under the Indian Companies Act vide Registration Certificate of Incorporation dated 17.8.2005. The Company purchased 25 bighas of land in Khasra No. 840/651 situated in Village Jetasan Patwar area Jetasan Tehsil, Rajasthan, out of which

9.73 bighas belonged to the members of Scheduled Caste. A
That property was purchased on 26.9.2005 by a registered sale
deed for a consideration of Rs.60,000/-. An application was
preferred by the respondent before the Revenue Authorities for
mutation of the property. The same was refused placing reliance
on a circular dated 19.11.2005, which stated that mutation could
be effected only if the transfer was between the members of
Scheduled Caste/ Scheduled Tribe, as the case may be. Since
the application for mutation was refused, the respondent herein
filed S.B. Civil Writ Petition No. 169/2006, which was allowed
by a learned single Judge. Aggrieved by the same, the State
preferred an appeal before the Division Bench, being D.B. Civil
Writ Special Appeal (Writ) No. DR (J) 1177/2008, which was
also dismissed following the judgment in *IOC* (supra). C

8. Heard learned counsel on either side. The Act is a
beneficial legislation which takes special care to protect the
interest of the members of Schedule Caste and Schedule Tribe. D
Section 42 provides some general restrictions on sale, gift and
bequest of the interest of Scheduled Caste and Scheduled
Tribe, in the whole or part of their holding. The reason for such
general restrictions is not only to safeguard the interest of the
members of Scheduled Caste and Scheduled Tribe, but also
to see that they are not being exploited by the members of non-
Scheduled Caste and Scheduled Tribe. The relevant provisions
of Section 42(b) are extracted below for easy reference: E

"42. General restrictions on sale, gift & bequest - The sale,
gift or bequest by a Khatedar tenant of his interest in the
whole or part of his holding shall be void if F

(a) xxxxxxx deleted

(b) Such sale, gift or bequest is by a member of a
Scheduled Caste in favour of a person who is not a
member of the Scheduled Caste, or by a member of a
Scheduled Tribe in favour of a person who is not a member
of the Scheduled Tribe." G
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A 9. Shri P.P. Choudhary, learned senior counsel appearing
for the respondent, submitted that the expression 'person', as
such, is not defined in the Act and, therefore, we have to go by
the definition of 'person' under the General Clauses Act, 1987.
The General Clauses Act defines the expression 'person' as
B follows:

"3(42). 'Person' shall include any company or association
of body or individuals, whether incorporated or not."

C 10. Learned senior counsel, therefore, submitted that, if it
is so read along with Section 3(42) of the General Clauses Act,
the expression 'person' used in clause (b) of Section 42 of the
Act takes in a juristic person as well and, therefore, if a member
of Scheduled Caste sells his property to a juristic person, the
sale cannot be declared as void, since a juristic person has
D no caste.

E 11. Dr. Manish Singhvi, learned Additional Advocate
General appearing for the State of Rajasthan, on the other
hand, contended that we cannot read Section 3(42) of the
General Clauses Act into Section 42(b) of the Act, out of
context. Learned counsel submitted that the expression 'person'
used in Section 42(b) of the Act is a natural person and not a
juristic person and if the transfer is by a member of Scheduled
Caste or Scheduled Tribe to a person who is not a member of
Scheduled Caste or Scheduled Tribe, then such a transfer is
F void under Section 42 of the Act.

G 12. Article 341 of the Constitution empowers the President
by public notification to specify the castes, races or tribes which
shall, for the purpose of the Constitution, be deemed to be
Scheduled Castes in relation to that State or Union Territory etc.
Article 341 of the Constitution reads as follows:

H "341. Scheduled Castes.- (1) The President may with
respect to any State or Union Territory, and where it is a
State after consultation with the Governor thereof, by public

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notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory, as the case may be.

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(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

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13. Article 342 of the Constitution deals with 'Scheduled Tribes' and reads as follows:

"342. Scheduled Tribes. - (1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union Territory, as the case may be.

D

E

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

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14. The expressions 'Scheduled Castes' and 'Scheduled Tribes', we find in Section 42(b) of the Act have to be read along with the constitutional provisions and, if so read, the expression 'who is not a member of the Scheduled Caste or Scheduled Tribe' would mean a person other than those who has been included in the public notification as per Articles 341

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A and 342 of the Constitution. The expression 'person' used in
Section 42(b) of the Act therefore can only be a natural person
and not a juristic person, otherwise, the entire purpose of that
section will be defeated. If the contention of the company is
accepted, it can purchase land from Scheduled Caste /
B Scheduled Tribe and then sell it to a non-Scheduled Caste and
Schedule Tribe, a situation the legislature wanted to avoid. A
thing which cannot be done directly can be not done indirectly
over-reaching the statutory restriction.

C 15. We are, therefore, of the view that the reasoning of the
High Court that the respondent being a juristic person, the sale
effected by a member of Scheduled Caste to a juristic person,
which does not have a caste, is not hit by Section 42 of the
Act, is untenable and gives a wrong interpretation to the above
mentioned provision.

D 16. We are also of the view that the Revenue Authorities
rightly refused the mutation as per circular dated 9.11.2005.
Condition No. 7(2) of the circular was rightly invoked by the
Revenue Authorities in denying mutation, which condition is
E extracted below for easy reference:

F "7(2). If the khatedar of Scheduled Caste / Scheduled Tribe
executes sale to such a person of Scheduled Caste /
Scheduled Tribe who is office-bearer of any firm/society/
company/legal institution, then the mutation on the basis
of registration shall be made only in the name of that
particular person/vendee who is a member of Scheduled
Caste/Scheduled Tribe and not in the name of that firm/
society/company/legal institution wherein he is office-
bearer or member."

G 17. The above mentioned condition makes it amply clear
that the mutation on the basis of registration shall be made only
in the name of that particular person/vendee who is a member
of Scheduled Caste/Scheduled Tribe and not in the name of
H any firm/society/company/legal institution wherein a person is

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office-bearer or member. When we apply the above principles to the transfer of land in question, we have no hesitation to hold that the sale deed effected on 26.9.2005 was void and therefore rightly denied mutation in Revenue records. Property, therefore purchased by the respondent from the members of Scheduled Caste vide sale deed dated 26.9.2005 and other sale deeds, therefore are void since hit by Section 42(b) of the Act and it is so declared. The State can, therefore, re-possess the lands and return the lands to the original owners who are members of Scheduled Caste.

18. We may hasten to add, at times, Section 42(b) may go against the interest of the members of Scheduled Caste / Scheduled Tribe as well. There may be several situations where they intend to sell the property for purposes like marriage of son/daughter or to purchase a better property and so on, but in that event sometimes they may not get a better competitive price, if the sale is made only among the members of Scheduled Caste / Scheduled Tribe. We have come across legislations where provisions are made enabling them to sell their lands to the members of non-Scheduled Caste / Scheduled Tribe, on getting permission from the prescribed authority. Such a provision may be sometimes helpful to the members of Scheduled Caste / Scheduled Tribe to get a better price for their land but it is for the legislature to incorporate appropriate provision in the Rajasthan Act.

19. Consequently, the appeals are allowed and the judgments of the learned single Judge and the Division Bench of the High Court are set aside. However, there will be no order as to costs.

B.B.B.

Appeals allowed.