

JUDGEMENT
Balco Employees Union
V
Union of India and ors
(Transferred case (c) No 8 of 2001 with
T.C. (c) Nos. 9 & 10 of 2001 and
W.P. (c) No 194 of 2001
Delivered on 10th December, 2001

Judges: Justice B.N.Kirpal
Justice Shivraj V.Patil
Justice P.Venkatarama Reddi

**RELEVANT PORTION OF THE JUDGEMENT PERTAINING TO THE
SAMATA CASE.**

It was contended on behalf of the State of Chattisgarh that the land on which industry has been set up was originally tribal land. The said land could have been acquired and used by public sector undertaking but the tribal land could not be transferred to a non-tribal. Once majority shares in Balco were transferred to a non-tribal company, the prohibition contained against the transfer of tribal land came into operation. Relying on the majority decision of this Court in Samatha vs State of A.P. & others, (1997) 8 SCC 191, it was contended that the transfer of land even by lease in favour of BALCO must be regarded as being invalid.

In Samatha's case, this court had to consider the validity of the grant of mining lease of Government land in a scheduled area to the 'Non-Tribals'. The Court had to consider the effect and applicability of Section 3(1) of the A.P. Scheduled Area Land Transfer Regulation, 1959 which read as follows:-

“3. Transfer of immovable property by a member of a scheduled Tribe – (1) (a) Notwithstanding anything in any enactment, rule or law in force in the Agency tracts any transfer of immovable property situated in the Agency tracts by a person, whether or not such a person is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of a person, who is a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh cooperative Societies Ac, 1964 (Act 7 of 1964) which is composed solely of members of the Scheduled Tribes”

While interpreting the said Regulation framed by the Governor in exercise of powers under Article 244 read with para 5(2) of the Fifth Schedule of the constitution, this Court held that the words “*transfer of immovable property..... by a person*” in that clause included the transfer by way of grant of mining lease by the State Government. Section 3(1) was interpreted as prohibiting any such transfer in favour of a non-scheduled tribe and it was further declared that such transfer shall be absolutely null and void.

While we have strong reservations with regard to the correctness of the majority decision in Samatha's case, which has not only interpreted the provisions of 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's case, it is a bench of three Hon'ble judges who by a majority of 2:1, interpreted the Fifth Schedule of the Constitution. However, what is important to note here is, as already observed herein above, 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.

Section 165 of the M.P.Revenue Code, 1959 deals with transfer of rights of Bhumiswami. Prior to its amendment on 29th November, 1976, Sub-section 6 of 165 read as follows:-

“Notwithstanding anything contained in sub-section (1), the right of a Bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe by the State Government by a notification in that behalf for the whole or a part of the area to which this code applies shall not be transferred by a person not belonging to such tribe without the permission of a Revenue Officer not below the rank of a collector, given for reasons to be recorded in writing”

By Section 2 of the M.P.Act No. 161 of 1976 published in the Gazette on 29th November, 1976, the aforesaid sub-section (6) of Section 165 was repealed and was substituted by the following provision:-

“Notwithstanding anything contained in sub-section (1) the right of Bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe by the State Government by a notification in that behalf for the whole or part of the area to which the Code applies shall-

- (i) in such areas as are predominantly inhabited by aboriginal tribes and from such date as the State Government may, by notification specify, not be transferred not it shall be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to such tribe in the area specified in the notification;*
- (ii) in areas other than those specified in the notification under clause (I, not be transferred or be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to such tribe without the permission of a Revenue Officer not below the rank of collector, given for reasons to be recorded in writing”.*

Explanation – for the purposes of this sub-section the expression “otherwise” shall not include lease.

Sub-section (6) of Section 165, before and after its amendment, does not contain any provision prohibiting the giving of tribal land by way of lease to non-tribals. Prior to its amendment, a land could be transferred to a non-tribal after getting permission of Revenue Officer not below the rank of Collector who is required to give his reasons for granting the permission. After amendment on 29th November, 1976 by virtue of provision of sub-section (6), lease of land is taken out of the purview of sub-section 6(1).

In the instant case, either the land was required and then given on lease by the State government to BALCO or permission was given by the District collector for transfer of private land in favour of BALCO. This was clearly permissible under the provisions of Section 165(6) as it then stood and it is too late in the day, 25 years after the last permission was granted, to hold that because of disinvestments, it must be presumed that there is a transfer of land to non-tribal in the year 2001 even though the land continues to remain with BALCO to whom it was originally transferred. The giving of land to BALCO on lease was in compliance with the provisions of Section 165(6) of the Revenue code. Moreover, change of management or in the shareholding does not imply that there has now been any transfer of land from one company to another. If the original grant of lease of land and permission to transfer in favour of BALCO between the years 1968 and 1972 was valid, then it cannot now be contended that there has been another transfer of land with the Government having been reduced its stake to 49%. Even if BALCO had been a non-public sector undertaking the transfer of land to it was not in violation of the M.P.Land Revenue Code. The decision of this Court in Samatha's case (Supra) is inapplicable in the present case as the statutory provision here does not contain any absolute prohibition of the type contained in Section (31) of the Andhra Pradesh Regulation, which was the basis of the decision in the Samatha's case.