

Niladri Patel

Vs

Khadi Sha and Others

Civil Appeal No. 1230 of 1973

(M. P. Thakkar, B. C. Ray JJ)

11.02.1987

JUDGMENT

1. The High Court was perfectly justified in holding that the appellant who claimed to have secured possession under an agreement of sale entered into before the prohibition against transfer from a person belonging to a Scheduled Tribe came into force could not legally acquire any title to the property having regard to the prohibition contained in Regulation 2 of 1956 (the Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulation, 1956). The regulation has been enacted in order to protect the Scheduled Tribes from being dispossessed of lands in the Scheduled Areas of the State of Orissa. A transaction violating the embargo cannot be invested with legality and no legal title can be acquired by one who violates the prohibition. The view taken by the High Court is therefore unexceptionable. The appeal must therefore fail on merits. So far as the fine levied on the appellant is concerned, having regard to the fact that he is also a tribal though not belonging to a tribe which is included in the Schedule, that is to say, though he is tribal but not a Scheduled Tribal, the fine levied on him may be reduced from Rs. 25 per acre to Rs. 10 per acre per year. Since respondent 1 has already secured possession in 1967 the fine will be payable only for the period during which he was in possession till 1967. Subject to this modification, the appeal fails and is dismissed. There will be no order as to costs.

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