PETITIONER:
KESHABO & ANR.

Vs.

RESPONDENT:
STATE OF M.P. & ORS.

DATE OF JUDGMENT: 08/01/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIK (J)

CITATION:
JT 1996 (1) 571 1996 SCALE (1)447

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

This appeal by special leave arises from the order dated May 7, 1992 of the Division Bench of the High Court of M.P. in M.P.No. 1499/92. The admitted position is that Section 165 of the M.P. Revenue Code, 1959 [for short, "the Code"] was enforced in Gariaband area from October 2, 1959 by way of an amendment and publication in the Gazette. The sale of the land of the Bhumiswami rights in favour of the appellants by the Adivasi (Scheduled Tribe) Somu Gond was made on December 23, 1960. Ultimately, the Board of Revenue in its order dated January 16, 1992 in Revision Case No. 150/90 confirming the order of Additional Commissioner dated 23.9.1990 held that even prior to 1976, even under the unamended Section 165(6) of the Code it is mandated that the purchaser should obtain prior permission from the competent authority for alienation of the Bhumiswami right of the adivasis. Since the permission was not taken, the sale was held void. The High Court by its order dated May 7, 1992 affirmed the view of the Board of Revenue.

It is contended by the learned counsel for the appellants that the notification under sub-section (6) of Section 165 was published in 1977 and the sale having been made in 1960, the finding of the Tribunal that the sale is void, is not correct in law. We find no force in the contention. Section 165 (6) reads thus:

> "Notwithstanding anything in sub-section (1) the right of Bhumiswami belonging to a tribe which has been declared to be aboriginal tribe by the State Government by a notification in that behalf for the whole or part of the area to which this code applies shall not be transferred 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."

A reading of this sub-section would also clearly indicate that the Bhumiswami right belonging to a tribe, which has been declared to be ab original 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 not be transferred to a non-tribal person, not belonging to such tribe, without prior permission of the Revenue Officer not below the rank of Collector, given for reasons to be recorded in writing. The Board of Revenue has pointed out that prior to the amendment in 1976, obtaining permission for alienation of the land was a condition precedent. If that condition precedent, viz., obtaining prior permission from the competent authority for reasons to be recorded therein was not taken, the sale in contravention of the Act, therefore, becomes void. It is a welfare legislation made to protect the ownership rights in the land of a Scheduled Tribe to effectuate the constitutional obligation of Articles 39(b) and 46 of the Constitution read with the Preamble. Economic empowerment of a tribal ot provide economic democracy is the goal. Prevention of exploitation of them due to ignorance or indegency is constitutional duty under Article 46. Agricultural land gives economic status to the tiller. Therefore, any alienation of land in contravention of the above objectives is void. It is contended that the application under Section 170 [1] should have been filed within two years from the date of sale. Since the application was not so filed, the authorities were not right in directing entertainment of the application. It is not in dispute that the authority has jurisdiction suo motu to go into the violation of the statutory provisions. Even otherwise, since it is a beneficial legislation, the authorities are bound to give effect to constitutional policy; they are not devoid of jurisdiction, even if it is filed beyond limitaiton to entertain the applications. It is a matter of public policy and of discretion. Under these circumstances, we do not think there is any substantial question of law warranting interference.

The appeal is accordingly dismissed. No costs.