IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4980 OF 2017

NAWANG & ANR. … APPELLANT(S)

VERSUS

BAHADUR & ORS.. … RESPONDENT(S)

O R D E R

1. This Civil Appeal is directed against judgment and order dated 23rd June 2015 passed in RSA No. 8/2003 passed by the High Court of Himachal Pradesh at Shimla.

2. We appreciate the efforts taken by Ms. Rebecca Mishra, learned *amicus curiae*, in assisting the Court, so also the assistance rendered by Shri Rajesh Gupta, learned counsel for the appellant(s).

3. The challenge, limited in nature, is to the direction issued by the High Court in paragraph 63 of the impugned judgment which is extracted as under:

"63. The upshot of the appreciation of the evidence and the law discussed hereinabove is that daughters in the tribal areas in the State of Himachal Pradesh shall inherit the property in accordance with the Hindu Succession Act, 1956 and not as per customs and usages in order to prevent the women from social injustice and prevention of all forms of exploitation. The laws must evolve with the times if societies are to progress. It is made clear by way of abundant precaution that the observations made hereinabove only pertain to right to inherit the property by the daughters under the Hindu Succession Act, 1956 and not any other privileges enjoined by the trial in the tribal areas."

4. This Court in (2024) SCC OnLine SC 3810, titled "***Tirith Kumar & Ors. vs. Daduram & Ors.***" has observed as under: -

"3. The parties to the present *lis* claim to be Hindus and therefore ask that they be governed by Hindu law in matters of inheritance. The High Court has disallowed this contention on the ground that the parties are members of the Sawara tribe, which is a notified tribe under Article 342 of the Constitution of India. The constitutional position in regard to Articles 341 and 342, which deal with scheduled castes and tribes, respectively, has been delineated by a Constitution Bench of this Court in *M.R. Balaji* v. *State of Mysore*[6] in the following terms:

> "20. …It was realised that in the Indian Society there were other classes of citizens who were equally, or may be somewhat less, backward than the Scheduled Castes and Tribes and it was thought that some special provision ought to be made even for them. Article 34(1) provides for the issue of public notification specifying the castes, races or tribes which shall, for the purposes of this Constitution, be deemed to be Scheduled Castes either in the State or the Union territory as the case may be. Similarly Article 342 makes a provision for the issue of public notification in respect of Scheduled Tribes. Under Article 338(3), it is provided that references to the Scheduled Castes and Scheduled Tribes shall be construed as including references to such other Backward Classes as the President may, on receipt of the report of a commission appointed under Article 340(1) by order, specify and also to the Anglo-Indian community. It would thus be seen that this provision contemplates that some Backward Classes may by the Presidential order be included in Scheduled Castes and Tribes."

We may also notice the observations in *State of Maharashtra* v. *Milind*[7] in this context:

"11. By virtue of powers vested under Articles 341 and 342 of the Constitution of India, the President is empowered to issue public notification for the first time specifying the castes, races or tribes or part of or groups within castes, races, or tribes which shall, for the purposes of the Constitution

be deemed to be Scheduled Castes or Scheduled Tribes in relation to a State or Union Territory, as the case may be. The language and terms of Articles 341 and 342 are identical. What is said in relation to Article 341 mutatis mutandis applies to Article 342. The laudable object of the said articles is to provide additional protection to the members of the Scheduled Castes and Scheduled Tribes having regard to social and educational backwardness from which they have been suffering since a considerable length of time. The words "castes" or "tribes" in the expression "Scheduled Castes" and "Scheduled Tribes" are not used in the ordinary sense of the terms but are used in the sense of the definitions contained in Articles 366(24) and 366(25). In this view, a caste is a Scheduled Caste or a tribe is a Scheduled Tribe only if they are included in the President's Orders issued under Articles 341 and 342 for the purpose of the Constitution. Exercising the powers vested in him, the President has issued the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950. Subsequently, some orders were issued under the said articles in relation to Union Territories and other States and there have been certain amendments in relation to Orders issued, by amendment Acts passed by Parliament."

(Emphasis supplied)

Recently, a seven-judge Bench in S*tate of Punjab* v. *Davinder Singh*[8] also made a reference to these judgments.

4. As is clear from the aforesaid extracts, the lists made under Articles 341 and 342 are to be amended only with the permission of the President. So, naturally, for a tribe to be notified as a scheduled tribe, a notification to that effect has to be issued and vice versa, i.e. for a tribe to be de-notified as well. The High Court noted that the parties did not produce any notification demonstrating that the Sawara tribe stands de-notified. There is no possibility of a different view on this question.

5. The HSA, 1956, at the very outset, details as to whom the legislation would apply, and it clearly states that scheduled castes and tribes shall be outside its purview of application. Section 2(2) thereof reads as under:

> "**2. Application of Act.-** (1) This Act applies- …
> (2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs."

6. The words of the section are explicit. The HSA, 1956, cannot apply to scheduled tribes. This position of law is well settled. We may reproduce with profit the observations made in certain judgments of this Court.

6.1 In *Madhu Kishwar* v. *State of Bihar*[9], MM Punchhi, J as his Lordship then was, noted the application of Section 2(2) of HSA as follows:

> "4. …Sub-section (2) of Section 2 of the Hindu Succession Act significantly provides that nothing contained in the Act shall apply to the members of any Scheduled Tribe within the meaning of

> clause (25) of Article 366 of the Constitution unless otherwise directed by the Central Government by means of a notification in the Official Gazette. Section 3(2) further provides that in the Act, unless the context otherwise requires, *words importing the masculine gender shall not be taken to include females*. (emphasis supplied) General rule of legislative practice is that unless there is anything repugnant in the subject or context, words importing the masculine gender used in statutes are to be taken to include females. Attention be drawn to Section 13 of the General Clauses Act. But in matters of succession the general rule of plurality would have to be applied with circumspection. The afore provision thus appears to have been inserted *ex abundanti cautela*. Even under Section 3 of the Indian Succession Act the State Government is empowered to exempt any race, sect or tribe from the operation of the Act and the tribes of Mundas, Oraons, Santhals etc. in the State of Bihar, who are included in our concern, have been so exempted. Thus neither the Hindu Succession Act, nor the Indian Succession Act, nor even the Shariat law is applicable to the custom-governed tribals. And custom, as is well recognized, varies from people to people and region to region."

The aforesaid position was reiterated by a Bench of three learned judges in *Ahmedabad Women Action Group (AWAG)* v. *Union of India*[10].

> 6.2 We find that the aforesaid position has been consistently adopted by the High Courts as well. Reference may be made to *Bhuri* v. *Maroti*, *Bhagwati* v. *Cheduram*[12], and *Bini B. (Dr.)* v. *Jayan P.R*. Here only we may clarify that this reference to judgments of the High Courts shall not be construed as a comment upon their merits."

5. Hence, more so, in view of the provisions of Section 2 of the Hindu Succession Act, 1956 no such directions extracted *supra*, could have been issued by the High Court, more so in a case where the issue was neither directly nor substantially involved in the intra-party appeal, arising out of the judgment and decree passed in a civil proceeding. Further, the directions issued by the High Court were not emanating from any one of the issues framed by the Court or pleas raised/agitated by the parties.

6. In this view of the matter, paragraph 63 of the impugned judgment / order dated

23.06.2015 containing directions are set aside to be expunged from the record.

7. The Civil Appeal is disposed of with the above directions. Pending application(s), if any, shall also stand disposed of.

…….J.
(SANJAY KAROL)

…….J.
(PRASHANT KUMAR MISHRA)

NEW DELHI;
OCTOBER 8, 2025

ITEM NO.104 COURT NO.12 SECTION XIV-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s).4980/2017

NAWANG & ANR. APPELLANT(S)

VERSUS

BAHADUR & ORS. RESPONDENT(S)

[HIGH UP ON THE BOARD]

Date : 08-10-2025 This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE SANJAY KAROL
HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA

(Ms. Rebecca Mishra, *Amicus Curiae*)

For Appellant(s) :
Mr. Rajesh Gupta, Adv.
Mr. Harpreet Singh, Adv.
Mr. Sumit R. Sharma, AOR

For Respondent(s) :

Upon hearing the counsel the Court made the following
O R D E R

1. The Civil Appeal is disposed of in terms of the signed order, which is placed on the filed.

2. Pending application(s), if any, shall stand disposed of.

(D. NAVEEN)
COURT MASTER (SH)

(ANU BHALLA)
COURT MASTER (NSH)