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A CASE SUMMARY: PROPERTY OWNERS ASSOCIATION & ORS. V. STATE OF MAHARASHTRA & ORS.¹

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ABSTRACT

A batch of petitions challenging the amendments of the MHADA were tagged together for the purpose determining the interpretation of the phrase “material resources of the community” mentioned in Art 39 (b) and the bring clarity as to the position of Art 31C after Minerva Mills case. Finally, after a period 32 years² the Supreme Court in its nine-judge bench on 05th November 2024 had given its decision on the above issues. This article aims at summarising the case of Property Owners Association & Ors. v. State of Maharashtra & Ors.

A. INTRODUCTION

In the present case the Supreme Court of India has tried to balance the constitutional value of achieving social and economic justice and recognition of individual rights of all citizens. A nine-judge constitutional bench consisting of Hon’ble Chief Justice D. Y. Chandrachud, Justice Hrishikesh Roy, Justice J. B. Pardiwala, Justice Manoj Misra, Justice Rajesh Bindal, Justice Satish Chandra Sharma, Justice Augustine George Masih, Justice BV Nagarathna, Justice Sudhanshu Dhulia, delivered its judgement on 05th November 2024. The apex court has interpreted the term “material resources of the community”. Further it clarifies the relation between Art 31C³ and Art 39(b)⁴ of the Indian Constitution.

¹ (2024)11 S.C.R. 1, 2024 INSC 835.

² <https://www.scoobserver.in/cases/nature-of-private-property-property-owners-association-v-state-of-maharashtra>.

³ **Art 31C. Saving of laws giving effect to certain directive principles:** Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19 and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy: Provided that where such law is made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.

⁴ **Art 39 Certain principles of policy to be followed by the State-** The State shall, in particular, direct its policy towards securing—

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good.

B. BACKGROUND AND FACTS OF THE CASE

Mumbai is one among the top 10 most densely populated cities in the world.⁵ Being an island city, the saline air leads to decreased life span of building structures. Due to the dense population, people occupy even in the buildings being unfit for human inhabitation. Loss to life and property due to building collapses lead to the implementation of laws to address this issue.

i. Introduction of Housing laws in Bombay:

The Bombay Housing Board Act, 1948 enabled the setting up of Housing Board of Bombay to execute housing schemes and construct new residential building, but the act failed to address the existing issue of building collapses. In furtherance, through the Bombay Building Repairs and Reconstruction Board Act, 1969, funds were generated by means of cess (borne by the owners and the tenants), for the repair and reconstruction of dangerous buildings.

ii. The Maharashtra Housing and Area Development Act, 1976:

The Maharashtra Housing and Area Development Act, 1976 (herein after referred as MHADA Act), unified, consolidated and amended the existing laws relating to housing, repairing and reconstruction of dangerous buildings and carrying out improvement works in the slum areas. The pre-existing laws were repealed on the enactment of MHADA Act.

The MHADA Act, categorised buildings in Greater Mumbai region as

1. Category A – buildings erected before 01/01/1940,
2. Category B – buildings erected between 01/01/1940 to 31/12/1950,
3. Category A – buildings erected before 01/01/1951 to 30/09/1969.⁶

iii. Amendment to MHADA Act:

The most significant amendment was the insertion of Chapter VIII A in the year 1986. This chapter dealt with the “acquisition of cessed properties for co-operative societies of occupiers”, and its provisions apply to the buildings in Category A, i.e. cessed buildings erected before 01/09/1940 in Brihan Mumbai. The Category A were acquired by the state and transfer to the occupiers at a price of 100 times the monthly rent, provided 70% of the occupiers applied.

⁵ [https://www.citypopulation.de/en/world/agglomerations/\(All urban agglomerations of the world with a population of 1 million inhabitants or more \(reference date: 2024-01-01\)\)](https://www.citypopulation.de/en/world/agglomerations/(All%20urban%20agglomerations%20of%20the%20world%20with%20a%20population%20of%201%20million%20inhabitants%20or%20more%20(reference%20date:%202024-01-01))). last visited on 24.02.2025.

⁶ Section 84, MHADA Act.

iv. Object of the Amendment Act:

The amendment Act aimed in the protection of the occupier's shelter, prevention of building collapses and promote equitable distribution of wealth. A declaration⁷ was also inserted to give effect to the principles in Article 39(b) of the Constitution.

The present case:

1. The property owner challenged this amendment Act for violation of rights guaranteed under Art 14 and 16 of the Indian constitution, before the High Court of Bombay. The Division Bench dismissed the petition and upheld that Chapter VIII A was not violative of Art 14 as they are enacted to give effect to principles laid down in Art 39 (b) and henceforth saved by Art 31C.
2. The three reference orders: The present appeal had travelled through 3 separate reference orders before being placed before the nine judges bench.

C. RELATED LEGAL PROVISIONS AND CASE LAWS**1. Article 31C of the Indian Constitution, 1950**

Art 31C was inserted in the Constitution in 1971.

- i. The first half of the Article 31C grants immunity to laws enacted in furtherance of clauses (b) or (c) of Article 39 against challenges based on Art 14, 16 and 31 are valid.
- ii. The second half of Art 31C excluding judicial review over whether a law in truth furthers the principles set out in clauses (b) or (c) of Article 39 was struck down.⁸

2. Article 39(b) of the Indian Constitution, 1950**39. Certain principles of policy to be followed by the State:**

The State shall, in particular, direct its policy towards securing –

- (b) that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good.

3. Sanjeev Coke Mfg. Co. v. Bharat Coking Coal Ltd.⁹

- i. This judgement was given by a five judges bench of the Supreme Court that deals with the policy passed by the government whereby coal mines were nationalised.

⁷ Section 1A, MHADA Act.

⁸ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

⁹ (1983) 1 SCC 147.

- ii. The court held that the expression “material resources of the community” as used in Article 39 (b) of the Constitution includes all resources and man-made, public and private owned resources and not just natural resources. Henceforth, the distribution mentioned in Art 39(b) includes transformation of private ownership into public ownership.

4. Mafatlal Industries Ltd vs. Union of India¹⁰

A five judges bench of the Supreme Court, in the majority opinion had noted that : “ *that the material resources of the community are not confined to public resources but include all resources, natural and man-made, public, and private owned*’ is repeatedly affirmed by this Court¹¹”

D. ISSUES

1. **Article 31C:** Whether Article 31C (as upheld in *Kesavananda Bharati*¹²) survives in the Constitution after the amendment to the provision by the forty-second amendment was struck down by this Court in *Minerva Mills*¹³; and
2. **Article 39(b):** Whether the interpretation of Article 39(b) adopted by Justice Krishna Iyer in *Ranganatha Reddy* and followed in *Sanjeev Coke* must be reconsidered. Whether the phrase ‘material resources of the community’ in Article 39(b) can be interpreted to include resources that are owned privately and not by the state.

E. CONTENTIONS OF THE PARTIES

a) APPELLANT’S ARGUMENTS

1. The Appellant’s argued that a material to be covered under Art 39(b), it should be a “material of the community”, otherwise it will not be brought under the policy. A resource must produce goods or services for the community or be ‘capable of producing wealth for the community’ for it to be called as ‘Material resources of the community’.
2. The interpretation of Art 39(b) given by the minority in *Ranganatha Reddy* was subsequently followed in *Sanjeev Coke*. The reliance placed on the *Sanjeev Coke* was

¹⁰ 1997 (5) SCC 536.

¹¹ The Supreme Court had earlier taken this stand in the case of *Sanjeev Coke v. Union of India* (1983 AIR SC 239) and *State of Karnataka v. Ranganath Reddy* ((1978) 1 S.C.R. 641).

¹² (1973) 4 SCC 225.

¹³ (1980) 3 SCC 625.

challenged by the appellants and further it was argued that this cannot be supplanted in the context of the MHADA Act, as it was given in the context of “nationalisation”. And the interpretation of “material of the community” as interpreted in Sanjeev Coke and Mafatlal are not good law.

3. At the stage of distribution that Art 31C and Art 39(b) protects the acquisition of resources and not at the anterior stage of acquisition of assets by the state or vesting.
4. The appellants urged the court to declare the Chapter VIII B of the MHADA Act as unconstitutional as it was violating the fundamental rights and right under Art 300A of the constitution and it did not in real sense give effect to the objectives laid down in Art 39(b), henceforth it does not fall under the protection given in Art 31C.
5. Further, the Appellants argued that post Minerva mills case there was no reasoned conclusion as to the validity of Art 31C and decisions were made on the assumption that the unamended portions of Art 31C continued to be valid. This led to abrogation of Art 14 and 19 through Art 31C, particularly post I.R. Coelho Case.

b) RESPONDENT’S ARGUMENTS

1. The MHADA Act, Chapter VIII A was reasonable and necessary to address the issue of dilapidated buildings and to meet the demand for housing in the city of Mumbai.
2. Further, it was argued that Art 39(b) includes privately owned property as opined in *Ranganatha Reddy* and subsequently followed in Sanjeev Coke and *State of Tamil Nadu & Ors vs. L. Abu Kavur Bai & Ors.*¹⁴. This proposition has now attained the status of *stare decisis*.
3. In *Mafatlal Industries* (a five judges bench) the Supreme Court had noted that ‘community’, to include resources of every individual and this was not a part of *obiter dicta* but forms part of the *ratio decidendi* of the judgment.
4. The Respondents argued that the phrase “material resources of the community”, when given a broader interpretation includes both private and public properties, by citing several precedents where housing, land, contract carriages and industrial plants were included in the definition.
5. In order to achieve social and economic justice the respondents urged the court to give a liberal interpretation to the constitutional provisions for the implementation of policies that are aimed to address the contemporary issues of the Indian society.

¹⁴ 1984 (1) SCC 515.

F. JUDGEMENT

The majority opinion was authored by Justice D.Y. Chandrachud for himself and 6 others and minority opinion was given by Justice Nagarathna and Justice Sudhanshu Dhulia, gave their partial dissenting judgement in their individual judgement. The following observations and decisions were given:

1. In deciding the first issue¹⁵ the bench had taken an unanimously held that Art 31C survived post *Minerva Mills*. The court made an observation stating that the 42nd Amendment was made only to expand the immunity under Art 31C and there was no independent intention to repeal Art 31C. The Court held that post *Minerva Mills* the 42nd amendment made to Art 31C stood nullified and not the entire provision of Art 31C. Thus, the legislation can make laws in furtherance of its objectives envisaged in Art 39(b) and such shall continue to seek protection under Art 31C.
2. The Court clarified that there was an error by relying on the minority observations of made in *Sanjeev Coke* and it is therefore not binding law. Further it pointed out that there was a majority opinion in a larger bench disagreeing with the view and henceforth, it neither has a persuasive value.
3. The Court clarified that the single sentence in *Mafatlal Industries Ltd* is not binding, since it formed part of obiter dicta and is not part of ratio decidendi of the judgement.
4. The Court interpreted Art 39(b) that it included all private property¹⁶. The Court further outlined the five significant elements of Art 39(b).¹⁷
5. The Court interpreted the phrase '*material resources of the community*'. It had examined into each word '*material*', '*resources*' and '*community*' independently and concluded that not all privately owned properties falls within the ambit of the phrase.

¹⁵ Whether Article 31C (as upheld in *Kesavananda Bharati*) survives in the Constitution after the amendment to the provision by the forty-second amendment was struck down by this Court in *Minerva Mills*?

¹⁶ In para 203 of the judgement "*Article 39(b) is not a source of legislative power. The inclusion or exclusion of 'privately-owned resources' from the ambit of the provision does not impact the power of the legislature to enact laws to acquire such resources. The power to acquire private resources, in certain situations, continues to be traceable to other provisions in the Constitution, including the sovereign power of eminent domain.*"

¹⁷ In para 204 of the judgement "*Five significant elements emerge from the text of Article 39(b), which has been reproduced in paragraph 2 of this Judgement. These are:*

- a. *The provision relates to "ownership and control";*
- b. *The ownership and control of "material resources" is dealt with by the provision;*
- c. *The material resources which the provision covers are those which are "of the community";*
- d. *The policy of the state must be directed to secure the "distribution" of the ownership and control of such resources;*
- e. *The purpose of the distribution must be to "best subserve the common good".*

G. DISSENTING OPINIONS

a. Justice Nagarathna's View on Article 39(b):

- i. Justice B.V. Nagarathana partially concurred with the majority on the aspect of Article 31-C.
- ii. She held that *Sanjeev Coke* did not violate judicial discipline, since it was on merits. And she upheld the decision taken in *Sanjeev Coke*.
- iii. With respect to *Mafatlal Industries Ltd.* she concurred with the majority that it did not form part of *ratio decidendi*, but held different as to majority judgement, noting that *Mafatlal Industries Ltd.* has great persuasive value.
- iv. She gave a dissenting opinion in interpreting Art 39(b), pointing out that a private owned property can be transformed and acquire a status of 'material resource of the community'.
- v. This transformation of a private owned property into a 'material resource of the community' is a two-step process. First, through specific legal mechanisms (nationalization, acquisition, vesting by law, state purchase, or voluntary conversion), a private resource can be transformed into "material resources of the community". Only then government can go with the second step of distribution.

b. Justice Sudhanshu Dhulia's view on Article 39(b):

- i. Justice Sudhanshu Dhulia partially concurred with the majority on the aspect of Article 31-C.
- ii. He dissented with the majority with respect to the interpretation to the phrase "material resources of the community". He emphasised in giving a boarder interpretation by stating the importance of State intervention in wealth distribution and how this aided the objectives of achieving social and economic justice.
- iii. He held that what is "material resources of the community" is to be decided by the legislatures and he was against the majority opinion as to laying down a pre-emptive limitation on what constitutes "material resources of the community". He emphasised that the phrase "material resources of the community" must be analysed from the distributive end of the resource, whether it leads to a common good and not to look if the resource is owned by public or private, this view of Justice Sudhanshu Dhulia is different from the majority approach and Justice B. V. Nagarathna's view towards the interpretation of the phrase "material resources of the community".

H. CONCLUSION

The Supreme Court held in the present case that even after the Minerva Mills decision (1980), Art 31C was constitutionally valid as held in Kesavananada Bharati (1973). The Court made its significant decision with interpretation of Art 39(b), whereby it clarified that not all privately owned property will fall within the phrase material resources of the community". The law laid down in *Sanjeev Coke* case, which enabled state to acquire all private property for redistribution was overruled, further the court held that only properties irrespective of it being private or government property, only those meeting out the specific criteria as "material resources" and "of the community" could be subject to redistribution.

I. REFERENCE

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