PROPERTY OWNERS ASSOCIATION & ORS. VS. STATE OF MAHARASHTRA & ORS.

Citation: Civil Appeal No. 1012 of 2002; 2024 INSC 835

Order dated: 5th November 2024

9 Bench Judge: CJI Dr. DY Chandrachud, Justice Hrishikesh Roy, Justice JB Pardiwala, Justice Manoj Misra, Justice Rajesh Bindal, Justice Satish Chandra Sharma & Justice Augustine George Masih; Concurring opinions individually penned by Justice B.V. Nagarathna & Justice Sudhanshu Dhulia

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FACTS

Maharashtra Housing and Area Development Act, 1976 (hereinafter 'MHADA' / Act) was enacted on 25th April 1977 which was amended on 26th February 1986. Chapter VIII of the act addresses repair and reconstruction of old buildings in Mumbai by levying cess on its owners to fund repairs. The amendment inserted Chapter VIII-A which deals with 'acquisition of cessed properties for co-operative societies of occupiers', which apply to buildings in category A which consists of buildings erected before 1st September 1940. It meant that the properties will be transferred from state to co-operative society on payment of hundred times the monthly rent of the premise for the purpose of preservation, repair or reconstruction. A declaration was also added that this act is aimed to give effect to principles in Article 39(b) of the constitution.

Appellants filed case before the High Court of Bombay challenging that the provisions of Chapter VIIII-A of the Maharashtra Housing and Area development act are violative of Article 14 and 19 of the Constitution. The respondents argued that the MHADA gives effect to the principles in Article 39 (b), and the Act cannot be challenged because of immunity given by Article 31C. Vide order dater 13th December 1991, the division bench of High Court of Bombay dismissed the petition by relying on the decision laid down in State of Maharashtra v. Basantibai Khetan that the provisions of act are saved by Article 31C as they give rise to principles of Article 39 (b).

The appeals were placed before a bench of three judges, who observed that the issue in all the cases referred to, has been rendered by five judge benches hence they referred the present appeals to a larger bench. The bench of five judges expressed that the interpretation of Article 39(b) in the case of Sanjeev coke requires reconsideration by a larger bench. Vide order dater 19th February 2002, the bench of seven judges held that the issue of interpretation requires to be interpreted by a larger bench.

ISSUE

The appellants submitted five issues before the nine-judge bench, and it was later decided that the last three issues can be decided by regular bench after the decision of this bench on the first two issues ie,. Article 31C and Article 39(b).

1. Whether Article 31C (as upheld in Kesavananda Bharti) survives in the constitution after the amendment to the provision by the forty-second amendment was struck down by this court in Minerva Mills, and
2. 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.
3. Whether the MHADA gives effect to the principles laid down in Article 39(b) and is protected by Article 31C.
4. In view of the decision in IR Coehlo, whether a challenge under Articles 14, 19 & 21 can continue to be mounted even if the act is protected by Article 31C.
5. Whether the other provisions of Chapter VIII-A of the MHADA can be challenged constitutionally on other grounds.

RULE

Case	Principle cited for
Kesavananda Bharati v. State of Kerala, 1973 (4) SCC 225; 1973 INSC 91	The first part of Article 31C has constitutional validity which provides immunity from challenges under Article 14, 19 & 31 to laws giving effect to the Directive Principles set out in clauses (b) or (c) of Article 39. The second half of Article 31C excluding judicial review over whether law in truth furthers the principles set out in clauses (b) or (c) of Article 39 is invalid. Directive Principles are fundamental in governance, they cannot be read so broadly as to abrogate Fundamental Rights, which form part of the basic structure.
State of Maharashtra v. Basantibai Khetan, (1986) 2 SCC 516; 1986 INSC 40	The provisions of Maharashtra Housing and Area Development Act to be protected by Article 31C.

Minerva Mills v. Union of India, (1980) 3 SCC 625; 1980 INSC 142	Section 4 of the forty–second amendment which expanded the scope of the immunity provided by Article 31-C from laws giving effect to the principles in clause (b) or clause (c) of Article 39 to laws giving effect to any Directive Principle is invalid. An expansive interpretation of Article 39(b) permitting compulsory acquisition of all private resources would impermissibly disturb the balance between Part III and Part IV.
Waman Rao v Union of India, 1981 (2) SCC 362	Reiterated the position set out in Kesavananda Bharati that the first half of unamended Article 31-C was constitutionally valid and second half was not.
Supreme Court Advocate On-Record Association v. Union of India, 2016 (5) SCC 1; 2015 INSC 285	When a constitutional amendment is struck down, the position that existed prior to the amendment stands revived.
Sanjeev Coke Manufacturing Co vs. Bharat Coking Coal Ltd, (1983) 1 SCC 147; 1982 INSC 93	Article 31-C was operative and that it ought to be interpreted as it stood prior to the Forty-Second Amendment.
Shamarao Parulekar v. District Magistrate, Thana, 1952 (2) SCC 1; 1952 INSC 63	A court cannot give effect to the omitted words after they have been removed by the amending Act.
ATB Mehtab Majid v State of Madras, 1963 14 STC 355; 1962 INSC 342	an amendment to a rule is invalidated by a court, the old rule does not revive. It draws on the underlying rationale of the Shamarao Parulekar decision in that once a rule is substituted, it ceases to have any legal force and cannot be given legal effect.
Excel Wear v. Union of India (1978) 4 SCC 224	Economic policy cannot be used to completely extinguish freedoms under Article 19(1)(g). If every private enterprise is treated as a "material resource of the community," it would justify blanket state control, which is unconstitutional.

M.R.F. Ltd. v. Inspector, Kerala Govt. (1998) 8 SCC 227	To interpret Article 39(b) in a manner that validates wholesale nationalisation of private property would amount to endorsing socialism, which is impermissible.

ANALYSIS

A. Article 31C

History:

History of Article 31C was analysed through amendments and landmark judgements such as Kesavananda Bharti, Minerva Mills and Waman Rao. The decision in Kesavananda Bharati upheld the first half of Article 31-C, granting immunity to statutes from Article 14 and Article 19 challenges if they implemented the principles in clause (b) or clause (c) of Article 39, but struck down the second half, which barred judicial review of such laws. The Minerva Mills decision invalidated Section 4 of the Forty-Second Amendment, which extended Article 31-C's immunity to any Directive Principle. The Waman Rao decision reaffirmed Kesavananda Bharati's stance, validating the first half of the unamended Article 31-C and invalidating the second half.

Arguments by appellant:

Appellants argued that the Forty–Second Amendment ceased the old provision and inserted a new one. The case of Minerva Mills invalidated the Amendment. The case of Shamarao Parulekar and ATB Mehtab Majid held that a judicial decision does not repeal law from books of statute but only makes is legally unenforceable. And that repealing the new provisions does not revive the provision prior to the amendment.

Arguments by respondents:

Respondents relying on case of Supreme Court Advocate On-Record Association, argued that in cases where an amendment is repealed, the provision before the amendment comes in place. it was also argued that in case of Sanjeev Coke and Basantibai Khetan it was held that the Article 31-C is operative as it was before the Forty–Second Amendment.

Conclusion:

The Hon'ble court expressed that in cases where the original statute is invalidated and the amendment is repealed, it would result in a third outcome which will not be favourable or intended by the makers or the court. It was held that when this rule applies to Article 31C, the original or unamended Article 31C which was upheld in Kesavananda Bharti is revived after the invalidation of Section 4 of the Forty-Second Amendment by the court's decision in Minerva mills.

This decision was agreed by all 9 judges of the bench.

B. Article 39(b)

Arguments by appellant:

The appellants referred to the case of Kesavananda Bharti and Minerva mills, while arguing that even though directive principles are fundamental, they cannot be placed above the fundamental rights. Hence, "material resources of the community" cannot mean all private property. Additionally, while referring to the case of Excel Wear and M.R.F. Ltd., the appellants argued that the economical ideology would justify control of state which is unconstitutional. Referring to the case of Mafatlal Industries, it was argued that "material resources of the community" was just an orbiter dicta, and not a ratio decidendi.

The appellants then criticised the judgement in Sanjeev Coke Manufacturing Co. by arguing that the order is based on minority opinion by justice Krishna Iyer in the case of Ranganatha Reddy and hence cannot form a precedent.

Arguments by Respondents

The respondents, while relying on the opinion of Justice Krishna Iyer in the case of Ranganatha Reddy, argued that "material resources of the community" necessarily includes private resources, since wealth in private hands also constitutes part of the community's resources and must be redistributed for the common good. Referring to Sanjeev Coke Manufacturing Co., the respondents submitted that the nationalisation of coking coal mines had been upheld by treating private mines as community resources, which supports a wide interpretation of Article 39(b). Further, reliance was placed on Mafatlal Industries, where the Court observed that material resources include both natural and man-made resources, whether publicly or privately owned. The respondents also referred to Bhim Singhji, where the Urban Land Ceiling Act was upheld as implementing Article 39(b) and (c), thereby recognising privately held land as a community resource. Lastly, they relied upon Basantibai Khetan to contend that the provisions of MHADA itself had already been upheld as protected by Article 31C, since they were enacted to give effect to Article 39(b).

Conclusion

The court analysing the arguments held that the judgement in Sanjeev Coke was relied on minority opinion in Ranganatha Reddy and hence the interpretation of Article 39(b) was incorrect. Additionally, it was clarified that the judgement in Mafatlal Industries contains only remarks and is not binding on other benches.

The court in majority finally held that the "material resources of the community" means resources that have a direct community element and are redistributed to serve the common good. Purely private property without community character does not fall under Article 39(b).

Dissenting Opinions

Justice Nagarathna emphasised that in the context of housing and urban redevelopment, even privately owned property (like old, cessed buildings in Mumbai) could sometimes be treated as a community resource, because it directly affects the shelter and safety of a large population.

Justice Dhulia similarly cautioned against interpreting "community resources" so narrowly that it undermines the welfare objectives of the Directive Principles.

CONCLUSION

1. Article 31 C remains in force as it was upheld in Kesavananda Bharti.
2. The bench in Sanjeev Coke made a mistake by relying on minority opinion in Ranganatha Reddy.
3. The ratio decidendi of judgement in Mafatlal case does not include the sentence "material resources of the community" include privately owned resources therefore it is not binding.
4. The phrase "material resources of the community" must have a community character and cannot be extended to all private property.
5. The only resources which directly serve the common good, such as natural resources, land for housing, or property essential for urban redevelopment and slum rehabilitation, would fall within the ambit of Article 39(b).

6. Purely private property with no nexus to the community interest cannot be brought under article 39(b), and any acquisition of such property cannot claim protection under Article 31C.

7. **Dissenting opinions:**

   Justice B.V. Nagarathna and Justice Sudhanshu Dhulia agreed with the majority's narrower interpretation but cautioned against construing "community resources" too restrictively. They observed that in contexts such as urban housing and redevelopment, privately owned property may sometimes be treated as a community resource because it directly affects the shelter and welfare of large sections of the population.