

Panchayat Varga Sharmajivi Samudaik Sahakari Khedut Coop. Society and Others

Vs

Haribhai Mevabhai and Others

Civil Appeal No. 9888 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

19.07.1996

ORDER

1. Leave granted. Though notice was served on the respondents - the first and the fourth respondents, the 1st respondent is not appearing either in person or through counsel; equally, 4th respondent through counsel. We have heard the counsel for the appellant as well as for the State.
2. The undisputed facts are that the appellant-Society consists of labourers and Scheduled Caste persons belonging to Village Khardosan in Deesa Taluka of Banaskantha District of Gujarat State. The appellant-Society had requested the Gram Panchayat to recommend to the District Collector for assignment of 300 acres of gaucher land (wasteland) vested in the Gram Panchayat for the purpose of cultivation and augmentation of economic empowerment of the members of the appellant-Society. The Gram Panchayat has unanimously resolved and requested the Collector to resume the land and assign it to the appellant. The District Collector in response thereto had resumed the land and assigned the same to the appellant. Calling the order of the District Collector in question a review petition was filed before the Government by the first respondent. The Government by order dated 20-8-1986 set aside the order on the ground that the District Collector did not issue any notice to the villagers before its resumption. When the writ petition came to be filed, while upholding that the wasteland was required to be resumed by the Collector for public purpose of assignment to the rural labourers belonging to backward classes and Scheduled Castes, the High Court directed the Collector to give notice to the villagers and to consider their objections and to pass order afresh thereafter. On appeal, by the impugned order dated 24-1-1994 in Appeal No. 33 of 1994, the Division Bench confirmed the same. Thus this appeal by special leave.
3. The question that arises for consideration is whether notice to the villagers is mandatory under Section 96(4) of the Gujarat Panchayat Act, 1961 (for short 'the Act') ? Section 96 reads as under:

"96. Government may vest certain lands in Panchayats. - (1) For the purpose of this Act, the State Government may subject to such conditions and restrictions as it may think fit to impose, vest in a panchayat open sites, waste, vacant or grazing lands or public roads, streets, bridges, ditches, dikes and fences, wells, river-beds, tanks, streams, lakes, nullas, canals, watercourses, trees or any other property in the gram or nagar, as the case may be, vesting in the Government.

(2) Subject to any conditions and restrictions imposed by the State Government under sub-section (1) and with the previous sanction of the Collector, a panchayat may discontinue or stop up any such public road or street vested in it by the State Government, but which is no longer required as public road or street and may lease

or sell any such land therefor used for the purposes of such public road or street :

Provided that one month before it is decided to stop or discontinue such public road or street, the Sarpanch or Chairman, as the case may be, shall, by notice signed by him and affixed in the part of the public road or street which is proposed to discontinue or stop up, and published in such other manner as is prescribed, inform the residents of the gram or nagar as the case may be, of the said proposal and consider any objections in writing made thereto; the notice shall indicate the alternative route, if any, which it is proposed to provide or which may already be in existence.

(3) Whenever any public road or street or any part thereof has been so discontinued or stopped up, reasonable compensation shall be paid to every person who was entitled to use such road or street or part thereof, otherwise than as a mere member of the public, as a means of access to or from his property and has suffered damage from such discontinuance or stopping up, and the provisions in the Bombay Highways Act, 1955, (Bom. LV of 1955) in relation to the assessment, apportionment and payment of compensation shall, mutatis mutandis apply thereto as they apply in relation to the closure of a highway under Section 52 of that Act.

(4) Where any open site or waste, vacant or grazing land vesting in Government has been vested by Government in a panchayat whether before or after the commencement of this Act, then it shall be lawful for the State Government to resume at any time such site or land, if it is required by it for any public purpose :

Provided that in case of any improvement of such site or land made by the panchayat or any other person, the panchayat or person, as the case may be, shall be entitled to compensation equal to the value of such improvement and such value shall be determined in accordance with the provisions of the Land Acquisition Act, 1894."

4. The land belonging to the Government was vested in the Gram Panchayat for one of the purposes enumerated in Section 96, which envisages resumption of land for any public purpose. When the land was no longer needed for a public road or a street, the Sarpanch or the Chairman, as the case may be, was enjoined under proviso to sub-section (2) to cause a notice signed by him affixed in any part of the public road or a street which was proposed to be discontinued or stopped and to give due notice to the villagers in the prescribed manner or indicating an alternative route, if available or if it has fallen to disuse. After considering the objections, if any, the Gram Panchayat is required to pass a resolution in writing for the discontinuation or disuse of the public road or a street.

5. Relying thereon, it is contended for the State that notice under sub-section (4) is also implicit when an open site or waste, vacant or grazing land vests in the Government but in the management of the panchayat is sought to be resumed; notice to the villagers or the affected persons is necessary before resumption by the Collector. Since such notice was not given, the resumption of land by the Collector is bad in law. We find no force in the contention.

6. It is fairly conceded by the learned counsel for the State that by operation of Article 46 read with Article 39(b) of the Constitution the material resources of the State should be so distributed as to subserve the common good. Article 46 enjoins that the State shall promote with special care the economic interests of the weaker sections of the people, in particular, the Scheduled Castes and

Scheduled Tribes and shall protect them from social injustice and all forms of exploitation. Consequentially, the Preamble of the Constitution assures socio-economic justice to every citizen to provide dignity of person.

7. In *Madhu Kishwar v. State of Bihar* [(1996) 5 SCC 125 : JT (1996) 4 SC 379] it was held that agricultural land is the foundation of a sense of security and freedom from fear. Assured possession is a lasting road for development, intellectual, cultural and moral and also for peace and harmony. Agriculture is the only source of livelihood for the tribes and rural poor to provide them social justice and status.

8. In *Dalmia Cement (Bharat) Ltd. v. Union of India* [(1996) 10 SCC 104 : JT (1996) 4 SC 555] a Bench of three Judges to which we were members had held that : (SCC p. 116, para 13)

"Social justice is the comprehensive form to remove social imbalances by law harmonising the rival claims or the interests of different groups and/or sections in the social structure or individuals by means of which alone it would be possible to build up a welfare State. The ideal of economic justice is to make equality of status meaningful and the life worth living at its best removing inequality of opportunity and of status - social, economic and political."

Right to cultivation of agricultural land was held to be a socio-economic justice to an agriculturist as fundamental right.

9. A Bench of three Judges of this Court in *Consumer Education & Research Centre v. Union of India* [(1995) 3 SCC 42 : 1995 SCC (L&S) 604] held that social justice is the arch of the Constitution to ensure life to everyone to be meaningful and liveable with human dignity. Jurisprudence is the eye of law giving an insight into the environment of which it is the expression. It relates the law to the spirit of the time and makes it richer. Law is the ultimate aim of every civilised society, as a key system in a given era, to meet the needs and demands of its time. Justice, according to law, comprehends social urge and commitment. Justice, liberty, equality and fraternity are supreme constitutional values to establish the egalitarian social, economic and political democracy. Social justice, equality and dignity of person are cornerstones of social democracy. Social justice consists of diverse principles essential for the orderly growth and development of personality of every citizen. Justice is the generic term and social justice is its facet, a dynamic device to mitigate the sufferings of the disadvantaged and to eliminate handicaps so as to elevate them to the level of equality to live life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of complex social change to relieve the poor etc. from handicaps, penury, to ward them off from distress and to make their lives liveable for greater good of the society at large. Social justice, therefore, gives substantial degree of social, economic and political equality, which is the constitutional right of every citizen. In para 19, it was further elaborated that social justice is one of the disciplines of justice which relates to the society. What is due cannot be ascertained by an absolute standard which keeps changing depending upon the time, place and circumstances. The constitutional concern of social justice, as an elastic continuous process, is to transform and accord justice to all sections of the society by providing facilities and opportunities to remove handicaps and disabilities with which the poor etc. are languishing. It aims to secure dignity of their person. It is the duty of the State to accord justice to all members of the society in all facets of human activity. The concept of social justice embeds equality to flavour and enliven practical content of life. Social justice and equality complementary to each other so that both should maintain their vitality. Rule of law, therefore, is a potent instrument of social justice to

bring about equality in result. Article 1 of the Universal Declaration of Human Rights envisions that all human beings are born free and equal in dignity and rights and each should act towards one another in a spirit of brotherhood. In that case the question was whether right to social security is a fundamental right of a workman? To make the life of the workman worth living with health, right to health was held to be a fundamental right and it is the duty of the State and the employer to provide facilities and opportunities for ensuring sustained good health and leisure to the workman as a facet of right to life under Article 21.

10. Social democracy means a way of life which recognises liberty, equality and fraternity as principles of life. They are the trinity. One cannot divorce one from the other. Without equality, liberty would produce supremacy of the few over the many. Equality without liberty would denude the individual of his initiative to improve excellence. Without fraternity, liberty and equality would not nurture as their natural habitat. Social and economic justice is a constitutional right enshrined for the protection of the society. The right to socio-economic justice in the trinity, the Preamble, Fundamental Rights and Directives is to make the quality of life of the disadvantaged people meaningful. Equal protection in Article 14, therefore, requires affirmative action by the State to those unequals by providing facilities and opportunities.

11. Gandhiji, the Father of the Nation, on the eve of independence had stated that "independence did not mean mere freedom from British Rule by breaking the bonds of slavery but it meant more than that. It meant justice to all citizens of India, irrespective of religion, caste, creed or language, each getting his legitimate due".

12. It was held in *Dalmia case* [(1996) 10 SCC 104 : JT (1996) 4 SC 555] that social and economic justice to the agriculturists is a fundamental right. It was further held that social justice forms the basis of stability in society. Economic justice means the abolition of those economic conditions which ultimately result in the inequality of economic values among men. It means to establish a democratic way of life built upon socio-economic structure of the society to make the rule of law dynamic.

13. In *Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde* [1995 Supp (2) SCC 549 : JT (1995) 3 SC 563] it was held that welfare is actually a form of liberty inasmuch as it liberates men from social conditions which narrow their choices and brighten their self-development. In para 17, it was held that "providing adequate means of livelihood for all the citizens and distribution of the material resources of the community for common welfare, enable the poor, the Dalits and tribes, to fulfil the basic needs to bring about a fundamental change in the India structure. Therefore, with a view to make political democracy stable, the State should see the socio-economic democracy takes strong roots and becomes a way of life. The State, therefore, is enjoined to provide adequate means of livelihood to the poor, weaker sections of the society, the Dalits and tribes and to distribute material resources of the community among them for common welfare etc. The socio-economic justice was held to be fundamental right of the poor. Economic empowerment was, therefore, held to be basic human right and the fundamental right as a part of right to live with equality of status of dignity.

14. Economic empowerment of the poor, in particular the Scheduled Castes and Scheduled Tribes, as is enjoined under Article 46, is a constitutional objective a basic human and fundamental right to enable the labourer, Scheduled Castes and Scheduled Tribes to raise their economic empowerment. When the appellant-Society had requested for assignment of the wasteland vested in the Gram Panchayat, the Gram Panchayat undoubtedly passed a unanimous resolution requesting the Collector

to resume the land for assignment to the appellant-Society. Since, the Gram Panchayat as a representative body passed the resolution, it would be obvious that the elected members represent the interest of the Gram Panchayat for effecting the constitutional goal. When the Gram Panchayat in turn passed the resolution for the said purpose, there was no obligation to issue notice to the villagers. That apart, the scheme of Section 96 is clear. The legislature is cognizant of the fact that when public road or street is sought to be discontinued or closed, public is likely to be affected the Sarpanch or Chairman acting on behalf of Gram Panchayat etc. is enjoined by the proviso to sub-section (2) of Section 96 to issue notice to them. It specifically enjoins the Sarpanch or the Chairman, as the case may be, to cause a notice to be issued in the prescribed manner, before passing a resolution so that the affected users would have an opportunity to put in their objections for consideration by the Gram Panchayat. But when the wasteland or open site or vacant land or grazing land vested in the State was sought to be resumed from the Gram Panchayat by the Collector for another laudable public purpose, then the silence of issuance of notice is eloquent. Requirement of hearing the villagers is not insisted. The legislature did not intend issuance of notice to the villagers. It is contended for the State that in a case where the Gram Panchayat sought to pass a resolution requesting the Collector to resume the land in the possession and enjoyment of a person and when the resumption affects such a person, the issuance of prior notice to such affected person should be implicit. We need not go into that question since that question does not arise in this case. Under these circumstances, the view of the Government, the learned Single Judge and the Division Bench of the High Court for issuance of a notice to the villagers is clearly not warranted by the scheme of Section 96(4) of the Act.

15. The appeal is accordingly allowed. The orders of the High Court and the Government stand set aside and that the District Collector stands restored. No costs.