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Premium

Case before Supreme Court: Can Govt redistribute privately owned property?

The case currently before the SC arose out of a challenge to the 1986 amendment to the Maharashtra Housing and Area Development Act, 1976 (MHADA) by owners of ‘cessed’ properties in Mumbai.

Written by **Ajoy Sinha Karpuram**
New Delhi | April 25, 2024 08:00 IST





MHADA was enacted in 1976 to address a major problem in the city — old, dilapidated buildings housing (poor) tenants despite becoming increasingly unsafe.

As wealth distribution dominates news headlines in India, the Supreme Court (SC) on Wednesday began hearing an unrelated case about whether the government can acquire and redistribute privately owned properties if they are deemed as “material resources of the community” — as mentioned in Article 39(b) of the Constitution.

Important minority opinion

Falling under Part IV of the Constitution titled “Directive Principles of State Policy” (DPSP), Article 39(b) places an obligation on the state to create policy towards securing “the ownership and control of the material resources of the community are so distributed as best to subserve the common good”. DPSP are meant to be guiding principles for the enactment of laws, but are not directly enforceable in any court of law.

Since 1977, the apex court has weighed in on the interpretation of Article 39(b) on multiple occasions — most notably, in *State of Karnataka v Shri Ranganatha Reddy (1977)*. This case saw a seven-judge Bench, by a 4:3 majority, holding that privately owned resources did not fall within the ambit of “material resources of the community”. However, it was Justice Krishna Iyer’s minority opinion which would become influential in years to come.

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Justice Iyer had held that privately owned resources must also be considered material resources of the community. “Every thing of value or use in the material world is material resource and the individual being a member of the community his resources are part of those of the community. To exclude ownership of private resources from the coils of Article 39(b) is to cipherise (make hidden) its very purpose of redistribution the socialist way,” he said.

SC affirms Justice Iyer’s opinion

This interpretation of Article 39(b) was later affirmed by a five-judge Bench in **Sanjeev Coke Manufacturing Company v Bharat Coking Coal (1983)**, where the court upheld central legislation that nationalised coal mines and their respective coke oven plants relying on what Justice Iyer had ruled. It held that the provision “takes within its stride the transformation of wealth from private-ownership into public ownership and is not confined to that which is already public-owned”.



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This judgment did not mention that Justice Iyer’s opinion was in the minority. Nor did it mention that the majority specifically distanced themselves from it (“We must not be understood to agree with all that he [Justice Iyer] has said in his judgment in this regard,” Justice N L Untwalia’s majority opinion had held at the time).

The concurring opinion of Justice Paripoornan in the nine-judge Bench case of [Mafatlal Industries Ltd v Union of India \(1996\)](#) also relied on the interpretation of Article 39(b) offered by Justice Iyer and the Bench in Sanjeev Coke Manufacturing. He held “the words ‘material resources’ occurring in Article 39 (b) will take in natural or physical resources and also movable or immovable property and it would include all private and public sources of meeting material needs, and not merely confined to public possessions.”

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Cessed properties dispute

The case currently before the SC arose out of a challenge to the 1986 amendment to the [Maharashtra Housing and Area Development Act, 1976 \(MHADA\)](#) by owners of ‘cessed’ properties in [Mumbai](#).

MHADA was enacted in 1976 to address a major problem in the city — old, dilapidated buildings housing (poor) tenants despite becoming increasingly unsafe. MHADA imposed a cess on the buildings’ occupants, which would be paid to the Mumbai Building Repair and Reconstruction Board (MBRRB) to oversee repair and restoration projects.

In 1986, invoking Article 39(b), Section 1A was inserted to MHADA to execute plans for acquiring lands and buildings, in order to transfer them to “needy persons” and the “occupiers of such lands or buildings”. The amendment also inserted Chapter VIII-A to the legislation, which contains provisions allowing the state government to acquire cessed buildings (and the land they are built on) if 70% of the occupants make such a request.

Over three decades with SC

The Property Owners’ Association in Mumbai challenged Chapter VIII-A of the MHADA at the Bombay High Court claiming that the provisions violate the property owners’ Right to Equality under Article 14 of the Constitution. The court, however, held that laws enacted in furtherance of DPSP could not be challenged on the grounds that they violated the right to equality, as per Article 31C of the Constitution (“Saving of laws giving effect to certain directive principles”).

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The Association appealed the decision in the SC in December 1992. In the apex court, the central question became whether “material resources of the community” as per Article 39(b) includes privately owned resources — which would include cessed buildings. In March 2001, a five-judge

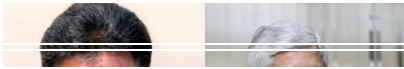
Bench heard the case and referred it to a larger Bench, stating that the views expressed in Sanjeev Coke Manufacturing require reconsideration.

In February 2002, a seven-judge Bench took note of Justice Iyer’s interpretation, and stated “we have some difficulty in sharing the broad view that material resources of the community under Article 39(b) covers what is privately owned,” and referred the challenge to Chapter VIII-A of the MHADA to a nine-judge Bench — which is now hearing the matter.

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First uploaded on: 25-04-2024 at 08:00 IST

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