
(1972) 09 MAD CK 0029
In the Madras High Court
Case No : Writ Appeal No. 219 of 1972

Pavadai Gounder and Others	Vs	APPELLANT
State of Madras and Another		RESPONDENT

Date of Decision : 18-09-1972

Acts Referred:

Constitution of India, 1950 — Article 15, 15(1), 15(4), 16(4), 17
Land Acquisition Act, 1894 — Section 4(1), 5

Citation : AIR 1973 Mad 458

Hon'ble Judges : Somasundaram, J; Ramamurti, J

Bench : Division Bench

Judgement

Ramamurti, J.—The land of the appellants an extent of 1.83 acres in Sorathur village, Tiruvannamalai taluk, was sought to be acquired for house sites to the Harijans of Kallayee village. Notification u/s 4(1) of the Land Acquisition Act was published on 18-3-1970 and notices u/s 4(1) and 5-A of the Act were also served on the pattadars i.e., the appellants. There was an enquiry u/s 5-A of the Act, and before completion of the proceedings the appellants filed W.P. 1662 of 1970 for the issue of a writ of mandamus restraining the State from proceeding further with the acquisition of the land in question. The validity and the bona fides of the acquisition were questioned on several grounds but the only point which was stressed before Palaniswami J. who disposed of the writ petition and before us in the writ appeal is that the object of the acquisition offends Art. 17 of the Constitution of India, which provides that untouchability is abolished and its practice in any form is forbidden. The contention of the writ petitioners (appellants) is that the proposal of the Government is to acquire land for the purpose of forming a Harijan colony and it virtually

amounts to segregating the Harijans in the locality and that would amount to practicing untouchability. Taking the class of Harijans in the locality as

a group and providing a house colony for house to be built by them would result in perpetuating the unhealthy and vicious practice of

untouchability, which is expressly forbidden under Art. 17. Palaniswami J did not accept this argument and hence this present writ appeal.

2. Learned counsel for the appellants relied upon the Bench decision of the Bombay High Court reported in Jagwant Kaur Kesarsing Dang and

Others Vs. The State of Bombay, in which it was held that the action of the State Government in requisitioning a land u/s 5 of the Bombay Land

Acquisition Act 1948, for construction of a colony for the benefit of only Harijans is of a discriminatory nature and violative of Art. 15(1) of the

Constitution. The Bench held that undoubtedly, providing housing accommodation for Harijans who are in a bad economic condition would be a

laudable object, but there was no reason why that laudable object should be confined to Harijans alone when there are people belonging to other

communities who are equally in the same sad plight. That decision was rendered before the Constitution (first Amendment) Act of 1951 introduced

sub-clause(4) to Art. 15 which is in these terms:--

S. 15(4). Nothing in this Article or in clause(2) of Art. 29 shall prevent the State from making any special provision for the advancement of any

socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

After this amendment there is no scope for the argument that any scheme undertaken for improving the conditions of living of Harijans is

discriminatory. Indeed Chagla, C. J. who delivered the judgment of the Bench of the Bombay High Court has observed (in Para 4 of the judgment)

that it is to avoid this charge of discrimination in favor of Harijans as offending Art. 15 that the Constitution had to be amended and that after the

amendment, it would be possible for the State to put up a Harijan colony in order to advance the interests of the backward class. We may refer to

the Bench decision of the Kerala High Court reported in Moosa Vs. State of Kerala, , in which it is stated that the term "public purpose" in the

Land Acquisition Act is used in an elastic sense and that any scheme which has the object of achieving public prosperity, public welfare and public

convenience and a scheme to acquire land for providing housing accommodation for Harijans cannot be challenged on the ground that it is not for a public purpose or as offending Art. 15 after the amendment was made introducing the sub-clause(4). Learned counsel, therefore, did not pursue this line of argument that it was not an acquisition for a public purpose. but he only stressed the point that, even though it is a laudable object the acquisition, in its effect, will result in segregation of Harijans amounting to practicing untouchability, which is forbidden under Art. 17. We see no substance whatsoever, in this contention. The word "practice" in Art. 17 is used to connote the mischievous sense or the unhealthy aspect of the practice i.e. what is forbidden is that a particular community shall not be subjected to any disability like restriction with regard to public shops, restaurants, hotels and places of public entertainment's or the use of wells tanks bathing ghats, roads etc, and that they should also have the right to enjoy all the amenities like any other citizen. What is prohibited under Art. 17 is singling out the Harijan community for hostile treatment as a socially backward community and not entitled to be treated on par with other citizens Art. 17, by no process of reasoning could be held to prohibit the State from introducing and evolving a scheme which improves their conditions of living and also will secure all the amenities mentioned above for the benefit of the Harijans. To say that any scheme in which the State takes a particular interest to improve the lot of the Harijans would amount to practicing untouchability resulting in segregation would defeat the very purpose of the Articles in the Constitution like Art. 15. Art. 15(4), Art 16(4) and other Articles dealing with the directive principles of the State. The idea of the State is not to segregate and single out the Harijans as a class for hostile and discriminatory treatment; it is just the reverse of it. The instant case is the best example of the laudable scheme which the government has undertaken. The place where the Harijans in Sorathur are living is in a low level much lower than the land where the caste Hindus are living. Because the Harijans quarters are in a lower level lower than the adjoining Hindu quarters during the rainy season water stagnates in the surrounding fields and renders the colony damp and most unhygienic to the Harijans to live there and it is to improve the conditions of the Harijans residents of the locality that the Government has undertaken the proposal to acquire the land. It will be simply meaningless to say that such a

scheme involves practicing of untouchability. Further, the fact that the Government acquires land for providing a colony for the Harijans does not mean that the Government had committed itself that no other person would be allotted house sites in the land acquired. It may be that the members of the other community may also be allotted sites if either there is surplus land or even for other reasons. The object of the acquisition is to promote the interests and the welfare of the Harijans who are living in a place which is not healthy and is unhygienic and to provide better amenities. The result is the writ appeal fails and is dismissed.

3. Appeal dismissed.