

J.P. RAVIDAS AND ORS.

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v.

NAVYUVAK HARIJAN UTHAPAN MULTI UNITS INDUSTRIAL
COOP. SOCIETY LTD. AND ORS.

APRIL 12, 1996

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[K. RAMASWAMY AND G.B. PATTANAİK, JJ.]

Constitution of India :

Articles 19(1)(3), 21, 38, 39(b), 46—Allotment of land to Co-operative Housing Society for members of Scheduled Castes—Bye-laws of society prescribing membership 80% to members of Scheduled Castes and 20% to others—Held the benefit of economic empowerment having been given to the members of Scheduled Castes and they having secured the property, neither the President of Society nor anybody else has right to induct any member other than prescribed percentage—The very object of providing two acres of prime land belonging to Government is to ameliorate economic conditions of 'dalits' providing right of residence, which is one of the fundamental and human rights to those persons who cannot afford to purchase lands construct house thereon. Universal Declaration of Human Rights, Article 25(1); International covenant on Economic, Social and Cultural Rights, 1966, Article 11(1).

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Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors., [1985] 3 SCC 545; M/s. Shantistar Builders v. Narayan Khimalal Totame & Ors., [1990] 1 SCC 520; P.C. Gupta v. State of Gujarat & Ors., [1995] Supp. 2 SCC 182; Chameli Singh & Ors. Etc. v. State of U.P. & Anr., (1996) 1 Scales 101 and Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde & Anr., [1995] Supp. 2 SCC 549, referred to.

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Co-operative Societies.

Co-operative housing society for members of Scheduled Castes—Bye-laws of society providing membership to consist 80% of members of Scheduled Caste and 20% others—Land allotted by Government on concessional rates—Applications for enrolment as members invited—Applicants belonging to non-Scheduled Castes being more and members of Scheduled Castes being less than their respective percentage—Order of Registrar Co-operative Societies to enroll all the applicants—Held, enrolment of members

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A *to be done according to bye-laws—Orders of the Registrar—Co-operative Societies and of the High Court are unconstitutional and are set aside—Society should invite applications from Scheduled Caste candidates to make up the shortfall—Money of non-Scheduled Castes in excess of their percentage should be returned.*

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7748 of 1996.

From the Judgment and Order dated 8.11.93 of the Bombay High Court in A. No. 790 of 1993.

C U.N. Bachawat, R.B. Masodkar and Mrs. Vrinda Dhar for the appellants.

S.K. Dholakia, A.K. Srivastava and S.M. Jadhav for the Respondents.

The following Order of the Court was delivered :

D Leave granted.

We have heard learned counsel on both sides.

E This appeal by special leave arises from the order dated November 8, 1993 made in Appeal No. 790/93 by the Bombay High Court. The admitted facts are that a society by name Navyuvak Harajin Utthapan Multi Unit Industrial Coop. Society Ltd. was formed on June 7, 1979. It was registered under the Cooperative Societies Act for industrial purpose. The Government have allotted to the said Society two acres of land at Bhandup (East), Survey No. 246 (pt.) of Kanjur village for construction of housing colony for accommodating the members of the Society at concessional rates keeping in view the welfare of the Harijan community. This order came to be passed by the Government of India on January 18, 1995. It would appear that originally the membership of the Society consisted of 28 members belonging to Scheduled Castes (for short, 'Dalits') and 5 O.B.C. members.

F It is not in dispute that as per the bye-laws the membership should consist of 80% dalits and 20% others. Originally, the membership was intended to be 112. Consequently, 90 members should be dalits and 22 members should be non-dalits. It is now an admitted position that the respondent-Society does not have 90 dalits members as per the bye-laws. It would appear that one Bal Krishna, who was then the President of the Society, had invited

G applications for enrolment. Consequently, 78 persons are said to have

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made applications for enrolment. It would appear that the Registrar of Cooperative Societies had directed the Society to enrol all of them as members of the Society. When the appellants, a members had objected to the same, the objection was over-ruled, which was ultimately negated by the High Court directing that all the 78 persons are directed to be enrolled as members of the Society. Thus this appeal by special leave. A B

Shri A.K. Srivastava, learned counsel appearing for 78 persons and for the builder contended that no corresponding amendment to the bye-laws of the Society was made to the effect that members of the Society should consist of 90 dalits and 22 others. In its absence, the High Court was right in directing to enrol non-dalit members as members of the Society. We are unable to appreciate the stand. C

The very object of providing two acres of prime land belonging to the Government is to ameliorate the economic conditions of the dalits providing right of residence, which is one of the fundamental and human rights to those persons who cannot afford to purchase the site and construct the flats thereon. Article 19(1)(e) read with Article 21 of the Constitution provide right to residence and settlement to live with dignity of person - a fundamental and human right. Articles 46, 39 and 38 enjoin the State to provide facilities and opportunities of construction of houses by the Dalits, Tribes and poor to enable them to live with dignity in permanent abode. Article 25 (1) of the Universal Declaration of Human Rights and Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights, 1966 provides that everyone has the food, clothing and right to housing as a part of human right and the State parties recognise the said right and would take appropriate steps to ensure realisation of the right to housing. D E F

In *M/s. Shantistar Builders v. Narayan Khimalal Totame & Ors.*, [1990] 1 SCC 520 a three-Judge Bench of this Court while permitting the disposal of the excess urban land under the Urban Land Ceiling Act held that the basic needs of man have traditionally been accepted to be food, clothing and shelter. Right to life is guaranteed in every civilised society which would take within its sweep right to food, clothing and decent environment and a reasonable accommodation to live in. For human beings, suitable accommodation would allow him to grow physically, mentally and intellectually. The Constitution aims at ensuring fuller H

- A development of every child which would be possible only if an appropriate house is provided.

- In *Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors.*, [1985] 3 SCC 545 a Constitution Bench of this Court held that right to life includes
- B right to residence. Right to residence is a part of life enshrined in Article 21. In *P.C. Gupta v. State of Gujarat & Ors.*, [1995] Supp. 2 SCC 182 another Bench of three judges of this Court held that right to residence and settlement is a fundamental right under Article 19(1) (e) and protection of life guaranteed by Article 21 encompasses within its ambit right to shelter to enjoy the meaningful right to life. Right to equality of status and
- C right to social and economic justice and dignity of person assures dignity of life guaranteed by Article 21. In *Chameli Singh & Ors. Etc. v. State of U.P. & Anr.*, [1996] 1 SCALE 101 another three-Judge Bench of this Court held that the right to economic empowerment enjoins the State under
- D Article 46 to promote social, economic and educational interests of the Dalits, the Tribes, the backward classes and the poor. Right to social and economic justice conjointly co-mingles with right to shelter as an inseparable component for meaningful right to life. Providing house sites and houses in implementation of the directives contained in Articles 28 and 39
- E (b) of the Constitution was upheld. In *Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde & Anr.* [1995] Supp. 2 SCC 549, this Court has held that right to economic empowerment to the Scheduled Tribes as enshrined under Article 46 of the Constitution is a fundamental human right under Articles 1, 3, 17, 22 and 25 of the Universal Declaration of Human Rights, 1948. The State is enjoined under Declaration on Right to
- F Development to provide facilities and opportunities consistent with Article 38 of the Constitution. Under Article 39 (b) of the Constitution, the State is enjoined to distribute the material resources of the community to subserve the common goods. All human rights are derived from dignity and worth of man. Democracy blossoms the person's full freedom to achieve excellence. The socio-economic content in directive principles is all pervasive to make the right to life meaningful to all Indian citizens. Welfare
- G is actually a form of liberty inasmuch as it liberates man from social conditions which narrow their choices and brighten their self development in a world of vastly unequal opportunities, where some are born into relative affluence and others into a subsistence economy. Liberation does not mean providing mere liberty but facilities to prevent their exploitation
- H through all legitimate means so as to relieve the disadvantaged from

perpetual inequities. Democracy is workable as long as there is a substantial area of shared values and aspirations among the people and where they have the maturity to rise above differences.

It was, therefore, obligated on the State to provide adequate means of livelihood to all citizens distributing the material resources of the community for common welfare. The ultimate object of the Directive Principles is to liberate the Indian masses, free them from centuries old coercion, ignorance, abject conditions and to prevent exploitation. The Union of India in implementation of the above Directive Principles in Article 39(b) and in discharge of its obligation under Articles 38 and 46 to provide facilities and opportunities to the Dalits, has allotted two acres of land in Bombay City for construction of houses to make their right to settlement and life meaningful, to enable them to live with dignity of person; and provided economic empowerment of settled residence to enjoy the right to meaningful life. The benefit of economic empowerment having been given to these members and they having secured the property, neither the President of the Society nor the builder has any right to induct any member other than the prescribed percentage as per the bye-laws. It is necessary to follow that the Society should consist of 90 Dalit members and 22 outsiders. Any contract or action which is opposed to constitutional animation and public policy is void. The action of the President of the Society and enrolment of non-dalits defeats the purpose of the Government of India behind giving the land for construction of houses by dalits. Therefore, the direction of the Registrar of Cooperative Societies would defeat the public policy. Any action taken in violation thereof is void. Accordingly, the orders of the High Court and the Registrar are unconstitutional and are set aside.

The Registrar is directed to conduct an enquiry and identify as to how many among 78 members are dalits and direct their enrolment as members of the Society. All others in excess of 22 of non-dalits consisting of 5 OBCs, initially enrolled as members and 17 among the rest of the non-dalits be enrolled as members of the society. The Society should invite applications from the dalits to make up the shortfall of 90 dalit members of the Society and to pay the cost of the flats constructed on the land allotted by the Government. If non-members have contributed any money for the construction, it is obvious that the amount should be returned to them with interest. Non-dalit members should be accommodated only

A against the 20% quota available to them on the basis of any mode like draw of lots or seniority in the matter of enrolment or on the basis of promptness in paying the construction cost etc. as may be devised by the Registrar.

B The Management of the Society is directed to place the entire material before the Registrar. The Registrar after giving notice to all the persons and hearing them, will decide as to who are dalits among 78 persons and who are non-dalits and decide the matter accordingly within three months and submit the report to the Registry of this Court.

C The Appeal is accordingly allowed, but in the circumstances without costs.

R.P.

Appeal allowed.