

SAMANTHA JUDGMENT: A JURISPRUDENTIAL INITIATIVE OF THE JUDICIARY TOWARDS SECURING AFFIRMATIVE ACTION FOR THE TRIBALS

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INTRODUCTION

The 1991 Census states that 90% of the Scheduled Tribes predominantly live in forest areas and intractable terrains, 95% of them are below poverty line and totally depend upon agriculture or agriculture based activities and some of them turn out as migrant construction labour due to their displacement from hearth and home for the so-called exploitation of minerals and construction of projects. As per the census tribal population in Andhra Pradesh was 41.99 lakhs and they adopted traditional shifting cultivation like *Podu* or *Jhoom*, they being poor and illiterate and away from modern agricultural technology and economy. Sociologists and Anthropologists like Prof. C.V.F Heimendorf and Arher had detailed studies conducted on the living conditions of the tribes, culture and customs etc. and found that the tribals held large tracts of land as masters and have their own rich cultures with economic status and cohesiveness as compact groups. However, the policy adopted by the government encouraged non tribals to immigrate in large numbers and settle down in tribal areas. This led to mass rebellion against their exploitation one such incident being of police firing in Inderalli (A.P.) in which hundreds of innocent tribals were killed.¹

Dr. P.V. Ramesh, I.A.S., Director, Tribal Welfare in his article had narrated an instance wherein in Utnoor Division of Adilabad District, a tribal in whose name 148 acres of land was recorded as owner, was declared as Surplus Landholder under the Land Transfer Act and the only 5 acres of land in his actual possession and enjoyment was taken by the Government as Surplus land.² The tribal economy was simple but with the gradual contact with non tribals

¹ Prof. Haimendorf, *Tribes of India- The Struggle for Survival*, Berkeley: University of California Press, 1982.

² Dr. P.V Ramesh, *Scheduled Party & Social Justice*, A.P. Judicial Academy, 178.

they started taking loans. The wiles moneylenders and traders exploited their innocence and honest, truthful and hardworking tribals became a prey for the greed and exploitation by non tribals.

Prof. Heimendorf explains how notoriously the non tribals had swelled up in number in the Agency areas of Telangana of Andhra Pradesh and disposed the tribals from their holdings with impunity and prevented them from enjoying right over their lands or unlawfully disposed them in collusion of the local revenue officials like the Patwaris, Deshmukhs etc. In many cases where the tribals had been cultivating the lands for several decades and generations, they were purposely categorized as *Sivaijamabandi*,³ and were evicted.

With New Economic policy 1991 the focus of Indian economy shifted from Socialist goals to Capitalist goals with LPG as main focus. In the mining sector, the Reserved and Protected forests were cleared and leased out to private mining companies not bothering to recognize the impact it would have on the indigenous people who had been living in those places for generations away from civilization. Hence, the long battle as to whether India in the face of Modernization and Developmental requirements be allowed to compromise the welfare state principles that the Constitution preaches began. *Samatha v. State of Andhra Pradesh & Ors.*⁴ is an important judgment in this regard.

THEORITICAL OVERVIEW

John Rawls in his article he says “... *fair equality of opportunity to obtain, the higher expectations of those better situated in the basic structure are just if and only if they work as part of scheme which improves the expectations of the least advantaged members of society...the social order should not establish and secure the more attractive prospects of those better off unless doing so is to the advantage of those less fortunate...The basic structure is perfectly just when the life chances of the least favoured are as high as they can be consistent with the requirements of the other principles.*”⁵ He believed that all differences in wealth and

³ “Treating as unauthorized occupants”

⁴ See *Samatha v. State of Andhra Pradesh & Ors.*, A.I.R. 1997 S.C. 3297.

⁵ John Rawls, *DISTRIBUTIVE JUSTICE: SOME AGENDA*, 10-11, Citation: 13 Nat. L.F. 51 1968, Content downloaded from HeinOnline(<http://heinonline.org>), Fri Nov 27 06:05:04 2015.

income, all social and economic inequalities, should work for the good of the least favoured. He called it the difference principle. However, it must be kept in mind that the difference principle applies in the long run as this extends over generations. It is the expectation of the least advantaged from one generation to the next that is to be improved consistent, as always, with the constraints of equal liberty and fair equality of opportunity.

D.J Bentley in his article⁶ quotes Rawls saying that there are two principles of justice: “*The first requires equality in the assignment of basic rights and duties, while the second holds that social and economic inequalities...are just only if they result in compensating benefits for everyone, and in particular for the least advantaged members of society*”⁷. For him the subject of justice is “*the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation. By major institutions I understand the political constitution and the principal economic and social arrangements.*”⁸ Therefore we may say that the Court had knowingly or unknowingly upheld the rights of the least advantaged and marginalized sections of the society, the tribals to a pristine environment by observing that any mining activity would endanger the Reserve forests from where these tribals get their means of subsistence and hence be prohibited. *Anton-Hermann Chroust* says, Aristotle tried to compare the concept of Equity to that of the Common Legal Justice System and observed that “Equity” is of the same genus (‘generically not different’) as the strict Common Law Justice, that “*It can never counteract or antagonize the principles of the latter, for it is not intended to discredit Justice according to a strict Common Law rule, but merely tries to complement or “improve” on the Common Law Justice wherever the latter, due to circumstances inherent to the particular nature of the case, seems to be insufficient to achieve its aims by its own means.*”⁹ Equity is the very instrument, that is to say, which assures a more perfectly functioning legal order. He finally concludes by saying that it would be quite erroneous, however, to consider Aristotle's notion of “Equity” and “Equitable Justice” a mere rectification of the strict Common Law and its unavoidable

⁶D.J Bentley, *JOHN RAWLS: A THEORY OF JUSTICE*, 4, Citation: 121 U. Pa. L. Rev. 1070 1972-1973, Content downloaded from HeinOnline (<http://heinonline.org>), Fri Nov 27 06:04:31 2015.

⁷ D.J Bentley, *supra* note 6, at 4.

⁸ D.J Bentley, *supra* note 6, at 8.

⁹ Anton-Hermann Chroust., *ARISTOTLE'S CONCEPTION OF "EQUITY" (EPIEIKEIA)*, 9-10, Harvard Law School, Cambridge, Mass, Citation: 18 Notre Dame Law. 119 1942-1943, Content downloaded/printed from HeinOnline (<http://heinonline.org>) Fri Nov 27 06:18:02 2015.

shortcomings by certain indefinite standards of the so called "*Natural Law Justice*" valid above and beyond any established (positive) legal norm".

SUMMARY OF THE CASE

Samata, an advocacy and social action group working in the southern state of Andhra Pradesh, has been fighting for the rights of tribal communities and for the protection of the environment in the Eastern Ghats region. In 1992, Samata was involved in an apparently local dispute over tribal lands being leased out to private mining industries while the government denied the people grant of title deeds. The people were forced to work as wage labourers in their own lands where small private companies were extracting minerals like mica and limestone. The tribal community approached Samata for regaining control over their lands. The state of A.P has well laid out laws under the Fifth Schedule where there are clear directions that no tribal land can be transferred to non tribals. Samata, while mobilizing a people's movement locally, took up a legal battle questioning the legality of the leases as per the land transfer regulations. Samata first filed a case in the local courts and later in the High Court in 1993 against the Government of A.P for leasing tribal lands to private mining companies in the scheduled areas. The High Court dismissed the case after which Samata filed a Special Leave Petition in the Supreme Court of India. A four- year battle led to a historic judgment in July 1997 by a three judge-bench.

These appeals were directed to resolve mutually inconsistent law laid by two Division Benches of Andhra Pradesh High Court. The appeals arise from Writ Petitions in which the Division Bench has held that the Andhra Pradesh Scheduled Area Land Transfer Regulation, as amended by 1970 Regulation and the Mining Act of 1957 do not prohibit grant of mining leases of Government land in the scheduled area to the non-tribals. This bench also held that the Regulation doesn't prohibit transfer of Government land by way of lease to non tribals. *The word "Person" in S.3 of the Regulation is applicable to natural persons namely, tribals and non tribals. The Regulations prohibit the transfer of the land in Scheduled Area by a Tribal to non-tribal natural persons. The leases granted in accordance with the provisions of the Mining*

Act to Non Tribals are valid. The FC Act was not violated by grant of leases and renewals thereof...

In the appeal filed by Hyderabad Abrasives and Minerals, another division bench earlier in 1993, had taken dramatically the opposite view and held that mining leases are illegal and that the word “Person” used in S.3 of the Regulation includes Government. Any lease to non tribals even if the Government land situated in Scheduled Area is in violation of S.3 and so void. Equally it held that mining lease in forest area for non-forest area or renewal thereof, without prior approval of the Central Government is in violation of S.2 of the Forest Conservation Act. Accordingly, the Division Bench directed the Government to prohibit mining operations in Scheduled Area except that the mines stacked in the surface be permitted to be removed after obtaining proper permits.

The admitted facts being that Borra Reserve Forest area along with its environs consisting of 14 villages is the notified scheduled areas in Ananthagiri Mandal of Vishakhapatnam District of Andhra Pradesh. The State Government was granting leases in these areas to several non-tribal persons. The primary questions which were to be dealt with in this appeal were

1. Whether the Regulation would apply to transfer of Government land to a non-tribal?
2. Whether the Government can grant mining lease of lands situated in Scheduled area to a non-tribal?
3. Whether the leases are in violation of S.2 of the Forest Conservation Act?
4. Whether the leases are in violation of the Environment Protection Act?

This was a three-bench judgment where a plethora of matters being related to the importance of agriculture for livelihood, social justice and base for dignity of persons were pondered upon, a detailed discussion as to the plight of tribal, the constitutional scheme to protect the Tribes, Scope of the Regulation 1970 were also discussed at length by S. SAGHIR AHMAD J., K. RAMASWAMI J. and G.B. PATTANAIK J.

After great deliberations and discussions, the following directions were given by the Hon’ble Court in its judgment:

1. That 'person' would include both natural persons as well as juristic person and constitutional government and that all lands leased by the government or its agencies to private mining companies apart from its instrumentalities in the scheduled areas are null and void.
2. Renewal of lease is fresh grant of lease and therefore, any such renewal stands prohibited.
3. Transfer of land in Scheduled Area by way of lease to non-tribals, corporation aggregate, etc stands prohibited
4. Every Gram Sabha shall be competent to safeguard and preserve community resources
5. Minerals to be exploited by tribals themselves either individually or through cooperative societies with financial assistance of the State.
6. Transfer of mining lease to non-tribals, company, corporation aggregate or partnership firm etc is unconstitutional, void and inoperative.
7. That transfer of land to the government or its instrumentalities is entrustment of public property as the aim of public corporations is in public interest and hence such transfers stand upheld.
8. Government to take a policy decision for a consistent scheme throughout the country in respect of tribal lands.
9. In the absence of total prohibition, the Hon'ble court laid down certain duties and obligations to the lessee to set aside at least 20% of net profits as part of the project expenditure, as permanent fund for development needs.
10. In States where there are no acts which provide for total prohibition of mining leases of land in Scheduled Areas, Committee of Secretaries and State Cabinet Sub Committees should be constituted and decision taken thereafter.
11. Conference of all Chief Ministers, Ministers holding the Ministry concerned and Prime Minister, and Central Ministers concerned should take a policy decision for a consistent scheme throughout the country in respect of tribal lands.

The wide interpretations made in this Judgment is usually followed in the European courts and is known as *Teleological Interpretation*. Lord Denning speaking in a Judgment in 1977,¹⁰ spoke about this interpretation saying “*All it means is that the judges do not go by the literal meaning of the words or by the grammatical structure of the sentence. They go by the design or purpose which lies behind it. When they come upon a situation which is to their minds within the spirit - but not the letter - of the legislation, they solve the problem by looking at the design and purpose of the legislature - at the effect which it was sought to achieve.*”¹¹

A similar concept is that of the principle of *Effet Utile* which is derived from international law. According to the principle, preference is to be given to the interpretation which is best able to further attain the objectives of the Treaty.”¹²

In this judgment, the Hon’ble Court relied on various Jurisprudential definitions and theories, Salmond being a prominent one. However, the judgment itself supported many of the theories propounded by various thinkers. This paper mainly tries to focus on thinkers like John Rawls and Aristotle and their concepts.

In the Samatha Judgment the Court had held that it is very important to uphold the Vth Schedule. It is the only guarantee to the Tribals to protect them from alienation of their lands and forests they have inhabited and sustained upon for years from the exploitation of non tribals. If the well-off sections of the society are allowed to feed upon the simplicity and ignorance of the tribals, the justice mechanism would be a total failure.

In the Samatha Judgment it is clearly seen how the Hon’ble Court had used the principle of Equity to remove any ambiguity as arising from the provisions of the A.P. Scheduled Areas Land Regulation, 1959 as amended by Regulation II of 1970 as to the definition of the word “Person”. The State Government of Andhra Pradesh who was the Respondent had contended that the scope of the Regulation doesn’t bind the State Government from leasing out Government land to non tribals. But the Court had using various legal and jurisprudential

¹⁰ See Buchanan v. Babco, [1977] 2 W.L.R. 107, at p. 112.

¹¹ Lord Slynn of Hadley, *They Call It 'Teleological'*, (The Royal Bank of Scotland Lecture 1992, Oxford), 1, Citation: 7 Denning L.J. 225 1992, (Content downloaded from HeinOnline (<http://heinonline.org>), Fri Nov 27 06:20:12 2015.

¹² H. Kutscher, “*Methods of Interpretation as seen by a Judge of the Court of Justice*”, 41-42, Judicial and Academic Conference, 27-28 September 1976, Court of Justice of the European Communities.

definitions and interpretations held that the Government as a “persona ficta” and therefore not outside its ambit. Here Aristotle’s Equity is in full play.

CONCLUSION

The Oxford Dictionary defines Affirmative Action as “*Action favouring those who tend to suffer from discrimination*”. The Supreme Court of India being the guardian of the Constitution of India has implemented this concept from time to time. It has since its inception been trying to interpret the Constitution in a way that best serves the peoples interest and upholds the principles envisioned by our founding fathers. *Samatha*¹³ is a landmark judgment where the Hon’ble Supreme Court implemented Affirmative Action in its own way by ruling in favour of the most discriminated and exploited marginalized sections of the Society- the tribals.

During research, it had been found that in spite of the Judiciary playing a very proactive, glitches as to its effective implementation has been noticed for quite some time now. There has been found a great politician-bureaucrat nexus. This landmark judgment was a warning to the State Government as to abhor from misusing their powers against the interest of the marginalized sections of the society like the Tribals who are often the most subdued and the voiceless. In this case, due importance was given to mining operations by private corporations in lands illegally leased from the State Government. The Court observed that these natural resources were the country’s resources which cannot be exploited for personal profits and government must see that the profits accruing from such activities are used for the nation’s sustainable development-including minimal pollution, destruction of habitat, flora-fauna and the native’s livelihood.

During research, the author came across violence in Dantewada in Chattisgarh, where Naxalites fight for a cause- to stop exploitation. A series of scams in the mining sector have demoralized the masses. Such reports of executive and political apathy are quite disheartening. It is because of such neglect that the Judiciary has to step into their arena and perform the task of Affirmative Action which is primarily an executive function. And it shall continue to do so till the other

¹³ *Id.* at n.4

two pillars of the State awake from their deep slumber. The Supreme Court shall keep moving under its motto- "*Yato dharmas tato jayah*", "*Whence law (dharma), thence victory*".

