

**CHIEF JUSTICE'S COURT**  
HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE HRISHIKESH ROY  
HON'BLE MRS. JUSTICE B.V. NAGARATHNA  
HON'BLE MR. JUSTICE SUDHANSHU DHULIA  
HON'BLE MR. JUSTICE J.B. PARDIWALA  
HON'BLE MR. JUSTICE MANOJ MISRA  
HON'BLE MR. JUSTICE RAJESH BINDAL  
HON'BLE MR. JUSTICE SATISH CHANDRA SHARMA  
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

**COURT NO.1**  
**SUPREME COURT OF INDIA**  
**RECORD OF PROCEEDINGS**

**Civil Appeal No. 1012/2002**

**PROPERTY OWNERS ASSOCIATION & ORS**

**Petitioner(s)**

**VERSUS**

**STATE OF MAHARASHTRA & ORS**

**Respondent(s)**

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TRANSCRIPT OF HEARING

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10:45 AM IST

1 **TUSHAR MEHTA:** My Lord, before the Petitioner starts, My Lord, we had something to say  
2 on the scope of the Reference, not obviously on the merits of the case. My Lord, I've already  
3 circulated, My Lord, my note on that, and all on this side, My Lord are *ad idem* to persuade  
4 Your Lordships. My Lord, the last point first. In our understanding... I'm sorry, My Lords. My  
5 apologies.

6  
7 My Lord, as per our understanding, what is referred for Your Lordships, consideration of nine  
8 Hon'ble judges is interpretation of Article 39(b) and not Article 31C. These are My Lord, the  
9 broad grounds, My Lord, I'm just...

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 31C, even that issue of revival will arise, right?  
12 Because that will deal...

13

14 **TUSHAR MEHTA:** It will not arise, My Lord. That's what, My Lord, I would wish to My  
15 Lord, point out. Kindly have a look at My Lord, my note, which is II B.

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Volume II A.

18

19 **TUSHAR MEHTA:** II B, II B, My Lord. Two, capital 'b'. II B, My Lord. Roman II, capital 'B'.  
20 It's a separate volume, My Lord. It was sent yesterday, My Lord. II B, My Lords. II A is  
21 additional written submissions of Respondents, My Lord. II B is short note on behalf of... The  
22 file name is 'Short Note on behalf of SG', My Lord. If it can be... I'm not going to read the entire  
23 note, My Lord, whatever is relevant.

24

25 **SAMEER PAREKH:** It's there in the link also.

26

27 **TUSHAR MEHTA:** You have it Sameer.

28

29 **SAMEER PAREKH:** It's in the Convenience Compilation, also. The link that we've sent, it  
30 has been added in that.

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We're just uploading it. So, on the lighter vein  
33 on this side you are trying to make our task easier by saying that there's only one issue and  
34 not...

35

1 **TUSHAR MEHTA:** That's how, My Lord, our understanding of, My Lord the chronology is.

2

3 **CHIEF JUSTICE D. Y. CHANDRACHUD:** ... [UNCLEAR] then go to the reference.

4

5 **TUSHAR MEHTA:** Kindly.

6

7 **RAKESH DWIVEDI:** That's the referring order also, if Your Lordship looks at it. It's only  
8 the issue referred is that if the material resources of the community, whether they include  
9 private property or not.

10

11 **SAMEER PAREKH:** If the learned Solicitor permits let us...

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The issue, that issue will arise if we come to  
14 the conclusion that 31C is revised, right?

15

16 **RAKESH DWIVEDI:** Your Lordship is right. Issue is there, but that's not referred because  
17 that's already covered by so many judgments.

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The question is, the ambit of 39(b) will arise  
20 provided 31C exist today. If 31C does not exist, then there's no question about the ambit of  
21 whether that will include 'b'.

22

23 **TUSHAR MEHTA:** 39(b), My Lord can still survive, My Lords. It's an independent  
24 provision, as a Directive Principle. The only...

25

26 **CHIEF JUSTICE D.Y. CHANDRACHUD:** 31C I was saying.

27

28 **RAKESH DWIVEDI:** But that's not referred.

29

30 **TUSHAR MEHTA:** Correct, My Lords.

31

32 **RAKESH DWIVEDI:** If Your Lordship wants to expand the Reference that's another thing,  
33 My Lords. But it's not referred.

34

35 **GOPAL SANKARANARAYANAN:** It's in fact covered by the *NJAC* judgment. Because if  
36 there were no... If, no, Doctrine of Revival, half the judges of our Court wouldn't be here today.

37

1 **TUSHAR MEHTA:** No, no, otherwise... Otherwise, My Lord, just a little...

2

3 **GOPAL SANKARANARAYANAN:** It's covered. They've considered it.

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alright. Anyway, now the note is uploaded.

6

7 **TUSHAR MEHTA:** Please, kindly, come to, My Lord para 2 at page 2.

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Page 2?

10

11 **TUSHAR MEHTA:** Page 2, My Lord. This was the 1996 *The Property Owners'*  
12 *Association*, the first judgment, I'm referring to. I'm not reading everything. Para two.' The  
13 said Reference, it was argued by the Petitioners, that Article 31C does not survive in the  
14 Constitution anymore...' Your Lordships, have? '...anymore after the decision in *Minerva*  
15 *Mills*. On the contrary, it was argued on behalf of the Respondent, that only a portion of 31C,  
16 as inserted by the Constitution, 25th Amendment, was declared unconstitutional in the  
17 judgment in *Kesavananda Bharati* and remaining portion would remain...' My Lord, I'm  
18 pointing out that the Court was conscious of these two provisions and a possible interlinking.  
19 My Lord, thereafter, Your Lordships, may come to My Lord, 3, sub-third para... My Lord,  
20 unnumbered paragraph. 'The judgment in *Minerva Mills* struck down Section 4 of the  
21 Constitution, 42nd amendment. On the basis of the same and subsequent judgment in  
22 *Waman Rao, Sanjeev Coke Manufacturing Company* it was argued that it was  
23 obvious position in law, that 31C as it stood after the judgment in *Kesavananda Bharati*  
24 would remain enforced. In essence, the argument of the Petitioner at the said time was that,  
25 the Doctrine of Revival as it applies to ordinary statute, would not apply in India to  
26 constitutional amendment as their subsequent declaration as unconstitutional on the  
27 touchstone of 'basic structure of the Constitution', etc.'

28

29 My Lord, please come to para 5, 'When the said matter came up for hearing before five Hon'ble  
30 judges, in the judgment reported in *Property Owners' Association....*' My Lord, I have  
31 given the page number, '... rather than dealing with the question raised concerning application  
32 of Doctrine of Revival and its applicability to constitutional amendments in India, which had  
33 a bearing on Article 31C, the Court dropped the said issue and referred a separate issue to a  
34 Bench of not less than seven judges.' My Lord, I have quoted from that Hon'ble five-judges  
35 Bench, 'Having heard the counsel at length, we are of the opinion that the views expressed in  
36 *Sanjeev Coke* require reconsideration. Keeping in view the importance of the point in issue  
37 namely, the interpretation of Article 39(b), it will be appropriate if these cases are heard by a

1 larger Bench of not less than seven-judges.' My Lord, then it comes, My Lord, before the  
2 Hon'ble seven judges, My Lord. My Lord, seven judges in ***State of Karnataka vs***  
3 ***Ranganatha Reddy***... My Lord, there were two opinions delivered. My Lord, one by My  
4 Lord, Justice Untwalia who was in majority four and minority by Justice Krishna Iyer. But  
5 Justice Untwalia categorically notes, that though we are not touching this issue, we are not  
6 approving or we are not concurring with the minority view, merely because we have not  
7 touched upon, may not be treated as our having concurred with that view.

8

9 Now para 7. 'The Reference of five-judges in ***Property Owners' Association***, i.e., five  
10 Hon'ble judges, therefore, notes that the judgment in ***Sanjeev Coke*** has adopted the  
11 interpretation of Article 39(b), as provided by Justice Krishna Iyer in ***Raghunatha Reddy***  
12 on the basis of the same...'

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD: *Ranganatha Reddy.***

15

16 **TUSHAR MEHTA:** I'm so sorry. ***Ranganatha***, my apologies, My Lord, ***Ranganatha***  
17 ***Reddy***. '...on the basis of the same, the five judges... five judge Bench in the ***Property***  
18 ***Owners' Association*** opined, that the views expressed in ***Sanjeev Coke*** concerning the  
19 interpretation of Article 39(b), requires reconsideration and only referred the said issue to a  
20 larger Bench of not less than seven judges.' Now, My Lord, seven judges, My Lord. Para 10,  
21 Your Lordships can come to. 'During arguments before the said Bench, a judgment of nine  
22 Hon'ble judges in ***Mafatlal Industries*** was highlighted on the issue of interpretation of  
23 Article 39(b). After taking note of the same, the seven judge Bench at para five, referred the  
24 following question to a Bench of nine Hon'ble judges. Having given due consideration, we are  
25 of the opinion that this interpretation of Article 39(b) requires to be reconsidered by a Bench  
26 of nine learned judges. We have some difficulty in sharing the broad view that material  
27 resources of the community under Article 39(b) covers what is privately owned. Therefore, the  
28 only issue before the present Bench is whether the phrase, material resources of the  
29 community under Article 39(b) covers, what is privately owned. Despite the said obvious  
30 position, the Petitioners have in great detail made submissions on whether 31C survives or...  
31 in the Constitution or not.' That's why, My Lord, I am pointing this out, at the outset. Their  
32 written submissions give details. 'In this regard, it is submitted that apart from the fact that  
33 said issues stand concluded by multiple judgments of this Court, including judgment in  
34 ***Kesavananda Bharati***, which specifically upheld Constitutional 25th Amendment Act, it  
35 is clear from a reading of Reference Order of five judges and seven judges in present  
36 proceedings, that the said issue has not been referred to a larger Bench of nine judges.

37

1 My Lord, then 13. 'The Petitioners have in great detail further placed the challenge to a new  
2 provision of MHAD Act and specifically Chapter VIII-A of the said Act. It is submitted that  
3 constitutionality of a State Act and individual provisions of the said Act, which would involve  
4 application of various other constitutional Principles and Fundamental Rights....' My Lord, it  
5 should be, '... may not be adjudicated by a larger Bench of nine judges as the same may have  
6 grave repercussions, etc., etc.'

7

8 And at the end, page 16, My Lord. This is what our understanding of the Reference is. Page 16,  
9 My Lord. 'Only issue concerning the interpretation of Article 39...

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just, just one second, we are just... taking us....  
12 Page 16 or?

13

14 **TUSHAR MEHTA:** One, six, My Lord.

15

16 **JUSTICE B. V. NAGARATHNA:** Page 16.

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Page 16?

19

20 **TUSHAR MEHTA:** 16, My Lord. Page 16 is our understanding of the Reference, My Lord.

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Therefore, it is submitted.

23

24 **TUSHAR MEHTA:** Therefore, it is submitted. 'That only issue concerning the interpretation  
25 of Article 39(b) and whether the phrase 'material resources of the community' includes private  
26 property or not has been referred to the present Bench of nine learned Judges. The  
27 interpretation of Article 31C or its revival or non-revival, has not been referred, and the validity  
28 of this Act is not referred.' My Lord, because, I believe Bengal also has a similar Act and they  
29 are also here.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** ...intervention by Bengal.

32

33 **TUSHAR MEHTA:** My Lord, so they would also... We will be supporting on...

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Solicitor, let's go in the reverse way. We'll  
36 tread the path of least resistance. In insofar as 'C' is concerned, where you say don't decide the  
37 validity of the MHAD Act in a combination of 9, that there may be some substance in what you

1 say, subject to hearing the other side of course, that will turn upon analysing the individual  
2 provisions, looking at the impact of various decisions and ordinarily, that's always left to the  
3 regular Bench.

4

5 **TUSHAR MEHTA:** Regular Benches, My Lord.

6

7 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's one aspect. Now coming to (b), we see  
8 that...

9

10 **TUSHAR MEHTA:** Would Your Lordships, like to read the Reference Order My Lord?

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We'll see the Reference Order immediately.  
13 But according to you, look, the fact that 31C... The principle that 31C in its original form, stands  
14 revived, as upheld in the 25th Amendment, upheld in *Kesavananda*. That is now according  
15 to you, that has been the position in our law, don't unsettle it, because we don't... You want  
16 31C to remain there and the Government obviously, we understand why....

17

18 **TUSHAR MEHTA:** Otherwise, also, My Lord, kindly take it... My Lord, absolutely logically,  
19 without going into the merits. Suppose, someday after 40 years, some mad Parliament, deletes  
20 Part III.

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Because if we come to the conclusion... if we  
23 come to the conclusion, 31C does not stand... 31C does not stand revived, then, of course, that  
24 will affect a whole lot of legislation.

25

26 **TUSHAR MEHTA:** My Lord, suppose... I'm giving a very extreme example. My Lord,  
27 suppose some Parliament in its wisdom, or lack of it, deletes Part III. Comes before Your... the  
28 deletion comes before Your Lordships. Your Lordships, sets aside the amending Act. Would  
29 there be a vacuum? The answer is, 'no'. The Fundamental Rights will come back. The Part III  
30 will come back. It's as simple. My Lord, kindly come to...

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's the point to be considered.

33

34 **SAMEER PAREKH:** Right.

35

36 **TUSHAR MEHTA:** My Lord, Volume V...

37

1 **SAMEER PAREKH:** If I am not... [UNCLEAR]

2

3 **TUSHAR MEHTA:** Volume V, the Reference Order...

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Let's do this. Now, let's hand it over to Mr.  
6 Parekh.

7

8 **TUSHAR MEHTA:** Only...

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We've got your point. Let him read the  
11 Reference Order and then tell us about where these issues arise from.

12

13 **SAMEER PAREKH:** Lordships, absolutely. Let me just place what the issue is. What are the  
14 Reference Orders? How it comes here?

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We've got your point now. But let's not pre-  
17 empt his argument. He can make that argument. Once he makes an argument on the scope of  
18 the reference, we feel that we should allow you at that stage to respond to him, we'll call upon  
19 you certainly [UNCLEAR] if necessary.

20

21 **R. VENKATRAMANI:** What is sought to be suggested, additionally, that if the Court were  
22 to hold that 39(b) is confined to only natural resources and not to any other resource. Then,  
23 the 31C argument may not even be necessary. Unless the Court crosses that.

24

25 **TUSHAR MEHTA:** If the contrary is held in...

26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Our Court has said that well, 39(b) would not  
28 appear to cover private property, whether material resources of the community would extend  
29 to private property or otherwise...

30

31 **TUSHAR MEHTA:** Tentatively Reference does say, My Lord.

32

33 **R. VENKATRAMANI:** That's what.

34

35 **TUSHAR MEHTA:** We are not able to subscribe to that view. That's what My Lord, we say.

36



1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But let's hear Mr. Parekh. Let him open and  
2 then we'll get back to you.

3

4 **TUSHAR MEHTA:** Certainly.

5

6 **SAMEER PAREKH:** Lordships, I'm grateful. In fact, State of Maharashtra first filed detailed  
7 submissions on all the issues, then wiser counsel probably prevailed. They've withdrawn that  
8 and now filed this note.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** [UNCLEAR]

11

12 **SAMEER PAREKH:** Lordship. So, may I just indicate My Lords, just to start with, just a  
13 little background and... I'm appearing in six petitions before, My Lords. We challenge... Five  
14 of them challenge Chapter VIII-A. We are in appeal and there's an independent....

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, you'll be making the argument, the initial  
17 argument, with the six matters. Then who will follow? Mr. Andhyarujina you'll be arguing...

18

19 **SAMEER PAREKH:** Mr. Andhyarujina, Mr. ...

20

21 **ZAL ANDHYARUJINA:** I am addressing, Your Lordships on two issues. My Lord, actually  
22 the issue of 31C. My Lord, I have three broad... three broadways I've prepared. I want to give  
23 Your Lordships, a brief legislative history of it. I wanted to point out why my learned friend,  
24 Solicitor General is, in fact, incorrect. My Lord, the question of 31C arises both as a point of  
25 reference. It arises out of the *Coelho* case, which is expressly referred to Your Lordships...

26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It arises is out of?

28

29 **ZAL ANDHYARUJINA:** *Coelho* case.

30

31 **SAMEER PAREKH:** *Coelho*.

32

33 **ZAL ANDHYARUJINA:** *Coelho* case, My Lord. My learned friend, has repeatedly  
34 corrected me on the pronunciation... on the *Coelho* case. And it even otherwise arises  
35 squarely, My Lord, in this constitutional challenge, as I will show Your Lordships. So, My Lord  
36 the Reference point is the least of...

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We were only on what is the lineup of counsel  
2 on your side? So, it's going to be...

3

4 **H. DEVRAJAN:** We are sharing the submissions. I'll be going on two aspects of the matter.  
5 The first aspect of the matter is, can they at all seek the protection of 39C in view of the  
6 province of 39C.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We just want to know who are the counsels?  
9 We know about time and everything.

10

11 **ZAL ANDHYARUJINA:** Just so that it's clear to, Your Lordship also. My Lord, Mr. Parekh,  
12 My Lord is giving the opening remarks. Lord, he will take about one, one and a half hours.  
13 Subject to what happens here My Lord, he might take Your Lordships to lunch, My Lord.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** After lunch...

16

17 **ZAL ANDHYARUJINA:** I am proposing to start after lunch, and my rough estimate is two  
18 sessions, roughly.

19

20 **HARSHVIR PRATAP SHARMA:** I'll be opposing the intervention application of State of  
21 West Bengal.

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** All right.

24

25 **VANSHITA SHUKLA:** I am appearing in one of the...

26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Why didn't you all do this, put your  
28 appearances down on a slip of paper and give it to the Court master that he'll circulate it to all  
29 of us.

30

31 **VANSHITA SHUKLA:** Our matter is arising from the West Bengal case pending before five  
32 judges Bench. The Bench itself said that it would take up our matter after the sentence is over,  
33 and therefore we want to intervene.

34

35 **TUSHAR MEHTA:** So far as states are concerned My Lord, everyone, My Lord assistance  
36 coming from everyone I am not opposing West Bengal or any state's intervention.

37

1 **HARSHVIR PRATAP SHARMA:** Which I would like assistance should kind consideration.

2

3 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Sorry, not right now.

4

5 **HARSHIVIR PRATAP SHARMA:** Eleventh Schedule and Twelfth Schedule.

6

7 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Please sit down. I will hear Mr. Parekh first.

8

9 **SAMEER PAREKH:** My Lord, to begin with, just to give a little summary of what are the  
10 issues and what is under challenge. There are six matters, so there are challenges. One relates  
11 to Chapter VIII-A of the MHAD Act in Maharashtra, relates to the island city of Mumbai now.  
12 And the second challenge is to the Maharashtra Rent Control Act which is in writ petition 660  
13 of 1998. And one of the reasons, of course, why we filed a writ petition is that there is an earlier  
14 judgment of this Hon'ble Court, *Malpe Vishwanath Acharya*, which has already held that  
15 the rent, Bombay Rent Control Act was void. The provisions relating to rent and following that,  
16 the Court adopted a method where they did not strike down the act, but stated that a new act  
17 should be formulated which was in the process and specifically holds that if the new act does  
18 not take care of the issues raised in *Malpe*, then the new act would also be void. So that's the  
19 background to the.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Maharashtra Rent Control act is in writ  
22 petition of 660 of?

23

24 **SAMEER PAREKH:** Double 60 of 1998. Now we had, in fact the two matters, *Malpe*  
25 *Vishwanath* and this one actually were tagged together at one stage. They were de tagged  
26 and the *Malpe* got decided and this, of course, is still awaiting, My Lord's decision. Now, just  
27 to give a background, these petitions relate to temporary provisions which were brought in  
28 during World War II, 1939. With effect from 1st January, 1939. They've continued all these  
29 times. They've only been, so to say, two increases in rent, while the wholesale price index, and  
30 we've given that data, has risen from seven to over 1000, but the rents have remained frozen.  
31 Before *Malpe* case, there was only one increase of 5%, plus some increase relating to repairs  
32 which were carried out, et cetera. And thereafter once the Maharashtra Rent Act has come in  
33 then another 5% provisions are there. Now because the rent followed..

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Our Court, followed Justice Venkataramiah's  
36 victim in Motor General traders, saying that a law which is valid on the date of its enactment  
37 may cease to become valid by a flux of science and therefore, they said that a World War II and

1 law which froze the rents as of 19... 1940 cease to have validity by just the lapse of time. You  
2 can't deprive landlords of a right to demand rent and the Court gave a certain time window.  
3 That's when the Maharashtra Rent Control Act came, correct. They took the cut-off date as '97.  
4 Right?

5

6 **SAMEER PAREKH:** They took but because '97, '87...

7

8 **CHIEF JUSTICE D.Y. CHANDRACHUD:** '87. But a 4% increase every year.

9

10 **SAMEER PAREKH:** Correct, but because the rents were already frozen for the premises it  
11 actually went back to January 1939, because from '39 to '87 there had been no change except  
12 one increase of 5%

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's a broad challenge.

15

16 **SAMEER PAREKH:** That's a broad challenge. And, in fact, so that's the Rent Control Act  
17 and if I succeed on that, in fact, my second challenge becomes easier because Chapter VIII-A  
18 provides that if 75, 70% of the occupiers decide to acquire the property, then they have to pay  
19 100 times the rent of the property. Monthly rent, not even yearly rent. Pay 100 times the rent  
20 and you become the owner of the property, and it's occupied, not even tenants. And we'll, of  
21 course, make our submissions on that. Now, if I succeed on the rent control, and the rent is  
22 invalid, then possibly my challenge to VIII-A becomes much easier. On VIII-A also, I'll, of  
23 course, independently make my submission. Now, My Lord, this matter comes through, before  
24 your Lords, nine-judge Bench combination by four reference order, first two judges referred it  
25 to three, three to five, five to seven and seven to nine. So may I just very quickly indicate before  
26 briefly indicating the facts, the three reference orders. First one, gives no reasons, so I'm not  
27 taking My Lords to that. The first one from three to five, is 1st May 1996. And if My Lord has  
28 Volume V, of the convenience compilation... it starts at page 2787.

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Volume V, page 2787.

31

32 **SAMEER PAREKH:** Lordship.

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 1996...

35

36 **SAMEER PAREKH:** 4 SCC, page 49. My Lords has paragraph 1 on the next page. 'One of  
37 the main questions for decision in these matters pertains to the constitutional validity of

1 Chapter VIII-A inserted in 1986 in Maharashtra Housing Area Development Act, we all call it,  
2 MHADA. Hereafter, referred to as MHAD Act, providing for acquisition of certain properties  
3 on payment of 100 times the monthly rent for the premises. These properties are mainly  
4 buildings which were first let out prior to the year 1940 on monthly rent, which the owner  
5 claimed as a measly amount of current value of property in Bombay and the present value of  
6 the rupees. Section 1A was inserted in the MHADA Act in '86. And it contains a declaration  
7 that this act is for giving effect to the policy of the State, towards securing principles specified  
8 in Clause B of Article 39 of the Constitution of India. Article 31C of the Constitution is  
9 therefore, attracted for excluding the attack to the validity of the enactment on the ground of  
10 Article 14 or 19 of the Constitution.' If I may just give a few comments while reading this, 21 is  
11 not protected under this. Similarly, 300A is also not protected. So, we will be making  
12 submissions on that. And also, 31C, My Lord, now in [UNCLEAR] in matter is laid down, that  
13 the reasons must be given to the President. Because that Presidential approval is required for  
14 two reasons. One is because there's a conflict between a Central Law and the State Law. In fact,  
15 three laws in this case, including transfer of Property Act. So, you must indicate to the  
16 President why you are seeking consent. And if that indication is not there that Presidential  
17 consent is not valid, in this case, no material has been produced and we will be making that  
18 point.

19  
20 My Lords, para 2. In order to circumvent the effect of Article 31C of the Constitution, Justice  
21 Nariman, the learned council for the petitioner contended inter-alia that 31C does not survive  
22 because of the UN. Subsequent to the decision in **Kesavananda Bharati**. Shri Desai, the  
23 learned council for the Respondent replied to those arguments by contending that 31C has  
24 originally enacted, minus the latter part, which was declared to be unconstitutional in  
25 **Kesavananda Bharati**, as it upheld in *Minerva Mills*, excluded any attack on the  
26 constitutional validity of the enactment. Both the learned counsels had submitted synopsis of  
27 their rival contention in the form of written submission. A brief history of Article 31C would  
28 help to appreciate the rival contentions. Article 31C has originally enacted was inserted in the  
29 Constitution, with effect from 20th April 1972 by Section 3 of the Constitution, 25th  
30 Amendment Act 1971. The Constitutional validity of Article 31C was examined in  
31 **Kesavananda Bharati**, which was decided on 24th April 1973, at page 1001 of SCR. The  
32 conclusion of the majority opinion is summarized, wherein conclusion number five is the  
33 second part of Article 31C, namely, and no law containing a declaration that it is for giving  
34 effect to such policy shall be called in question in any Court on the ground that it does not give  
35 effect to such policy, was declared to be invalid. While the rest of Article 31C was appealed, is  
36 valid. Thereafter, with effect from 3/1/1977 by the Constitution 42nd Amendment Act Section  
37 4, the word the principle specified in Clause B and C of 39, the words, 'All or any of the

1 principal laid down in Article 4' was substituted. Then on 15/5/1978 was introduced in  
 2 Parliament, wherein Clause 8 was to amend Article 31C to restore it to the position prior to the  
 3 amendment by the Constitution 42nd Amendment, in the form as it stood as a result of the  
 4 decision in **Kesavananda Bharati**. Our Clause 8 of the bill was dropped after debate in  
 5 Parliament. And this attempt at the Parliament was abortive. Then came the decision in  
 6 **Minerva Mills**. The operative part of the order in **Minerva Mills** was pronounced on  
 7 9/5/1980. And the reason for the same were pronounced on 31/7/80. The basis of which  
 8 decision in respect of 31C was rendered in **Minerva Mills**, as is indicated in paragraph 24.  
 9 The next question, which we have to consider is whether the amendment made by Section 4  
 10 of 42, amendment to Article 37, one of the Constitution is valid. Mr. Palkhivala did not  
 11 challenge the validity of the unamended Article 31C, and indeed, that could not be done. The  
 12 amended Article 31C forms the subject matter of separate proceeding, and we have indicated  
 13 therein, that it is constitutionally valid to the extent it was appealed in **Kesavananda**  
 14 **Bharati**. In **Minerva Mills** Section 4 of the Constitution 42nd Amendment act was held to  
 15 be invalid and decision was rendered on the basis that 31C continued in the form in which it  
 16 existed as a result of the decision of **Kesavananda Bharati**.

17

18 The next decision in **Waman Rao**, wherein the operative Order was pronounced on  
 19 9/5/1980 and the reasons were pronounced in 13th November 80, these are reported in 1980  
 20 so and so. In **Waman Rao** also, **Minerva Mills** it was assumed that 31C as it stood prior to  
 21 its amendment by the Constitution, 42nd Amendment, as a result of the decision  
 22 **Kesavananda Bharati** stood revived. The decision in **Sanjeev Coke**, decision is **Sanjeev**  
 23 **Coke** versus **Bharat Coking Coal**. Even though in **Sanjeev Coke** there is criticism of the  
 24 majority opinion on **Minerva Mills**, expression of broad agreement, with the view of Justice  
 25 Bhagwati as he then was in that decision the judgment proceeds on the basis that 31C stood  
 26 revived. If I return to the next paragraph, and come to just the last two, three lines, if My Lords,  
 27 permits or should I.... let me just read the whole paragraph. One of the submissions of Shri  
 28 Nariman is that the Doctrine of Revival as it applies to ordinary statute has not been applied  
 29 in India to Constitutional amendments. On this basis, we contended that Clause 8 of the Bill,  
 30 88 of 78, which was to revive 31C as it stood as a result of **Kesavananda Bharati**, having  
 31 been dropped in Parliament 31C as it stood as a result of **Kesavananda Bharati**, did not  
 32 stand revived when the amendment was waived to the Constitution 42nd Amendment 1976,  
 33 with effect from 3rd January 77, was later struck down. He contended that the decision in  
 34 **Minerva Mills** proceeded on the basis of a concession made by Mr. Palkhivala, and on an  
 35 assumption that 31C, as it survived as a result of **Kesavananda Bharati** stood revived after  
 36 subsequent events. He submitted that.... that is not the decision in **Minerva Mill** in the  
 37 question neither arose, nor was it the decision therein and decision in **Waman Rao** and

1 **Sanjeev Coke** also proceeded on the same basis. He contended that 31C does not therefore,  
2 survive in the Constitution and benefit thereof is not available, to exclude the attack to the  
3 validity of MHAD Act on the ground of 14 and 19 of the Constitution. Several other arguments  
4 are advanced as Shri Nariman related to his contention. Mr. Nariman, also referred to the  
5 word Constitution, shall stand amended in accordance with terms of the Bill 368 (2) to support  
6 this contention. Shri Nariman also contended with reference to certain decision that such a  
7 question relating to a provision in the Constitution cannot be bypassed on the principle of  
8 *stare decisis*. So, we assured this, on the other hand, contended that the matter stand  
9 concluded by the decisions of **Minerva Mills, Waman Rao** and **Sanjeev Coke**, wherein  
10 the revival of 31C as it stood as a result of **Kesavananda Bharati** was not even disputed  
11 because that is obvious position in law. He also contended that there is nothing in 368(2) to  
12 support the contention of Shri Nariman. Shri Desai also submitted that it is too late to consider  
13 this question, when this is how 31C has been understood for years. The details of the  
14 arguments of both learned Councils in the form of synopsis of written submissions are on  
15 record. The question is whether these points which have been raised by Shri Nariman should  
16 be considered and decided by a larger Bench of at least five Judges. Shri Desai submitted that  
17 since these contentions have no substance merely because related to interpretation of certain  
18 provisions of the Constitution, is no ground to require hearing of the matter by a Bench, not  
19 less than five judges. Having heard learned Counsel, so sometimes we have formed the opinion  
20 that it would be more appropriate for a Bench of not less than five judges to consider and  
21 decide these questions for an authoritative pronouncement on the same. The decision in  
22 **Minerva Mills, Waman Rao** and **Sanjeev Coke** are all by a Bench of five judges. The  
23 question in the form it is raised by Shri Nariman did not arise for consideration in any of the  
24 decision which are rendered on certain premises, as indicated therein, which assumption is  
25 now seriously challenged by Shri Nariman. Even it is assumed that Article 145(3) of the  
26 Constitution is not attractive, it does appear to us that in order to settle the controversy on this  
27 point, which is of some significance and to avoid the questions being re agitated before another  
28 Bench of less than five judges, the more appropriate course is to refer the matter for being  
29 heard and decided by a Bench, not less than five judges. For the aforesaid reason, we direct  
30 the papers we laid before the learned Chief Justice for constituting a larger Bench of not less  
31 than five judges. This is the first reference and then the matter did come up before five judges,  
32 and that is now reported at page 3150 of Volume V as **(2001) 4 SCC**.

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 2001?

35

36 **SAMEER PAREKH:** **(2001) 4 SCC** page 455.

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Volume 58

2

3 **SAMEER PAREKH:** 3150. Again, a short order of two pages. I can just quickly read them.  
4 Again, the background is given. My Lords have Volume V, page 3151, para 1?

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 3151, right?

7

8 **SAMEER PAREKH:** Starts at 3150, at 3151.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

11

12 **SAMEER PAREKH:** In these cases, the main challenges to the constitutional validity of  
13 Chapter VIII-A, which was inserted in 1986 in the MHADA Act in 1976, which inter-alia  
14 provided for the acquisition of certain properties and payment of 100 times the monthly rent  
15 for the premises. By the said amendment, Section 1A was also inserted in the Act, and contains  
16 a declaration, that Act is for giving effect to the policy of the State, towards securing the  
17 principle specified in Clause B of Article 39, of the Constitution of India. In view of Article 31C,  
18 of the Constitution, the contention of the State was, that the validity of any part of the statute  
19 on the ground, that it violated Article 14 or 19 of the Constitution, was not permissible. The  
20 case was heard by a Bench of three judges, at that time on behalf of the appellant, a contention  
21 was sought to be raised inter-alia to the effect, that 31C did not survive, because of the event  
22 subsequent to decision in *Kesavananda Bharati* case. It was also submitted before the  
23 Bench that the doctrine of revival, as it applied to ordinary statutes, did not apply to the  
24 Constitutional Amendment. When a part of the 42nd Amendment, which amended 31(C) had  
25 been held to be invalid, it did not result in the automatic revival of the unamended 31(C). In  
26 view of the aforesaid contention, which was raised by the order of 1-5-96, reported in so and  
27 so, the matter was referred to a larger Bench of not less than five judges. We heard the council  
28 at a length on various issues which arise in these cases. One of the points which arises for  
29 consideration relates to interpretation of 39(b) of the Constitution. In *State of Karnataka*  
30 *vs Ranganatha Reddy*, validity of the Karnataka Contract Carriage Acquisition Act '76 was  
31 challenged, and the question which arose was whether the state government could acquire and  
32 then transfer countersigned portion of the interstate permits to Road Transport Corporation.  
33 Two judgments were delivered, in that case, Justice Krishna Iyer, for himself and two other  
34 learned judges, while concurring, I'm sorry, while concurring with the decision in Justice  
35 Untwalia, with whom three other judges agreed, interpreted 39(b) of the Constitution, and  
36 then came to the conclusion, the Act had direct nexus with 39(b), and by virtue of Article 31C,  
37 its validity could not be challenged when the ground of it being violative of Article 14, 19 (1) F



1 of the Constitution. Justice Untwalia in this judgment, observed that, we do not consider  
2 necessary to express any opinion with reference to Article 31C read with Clause B and C of  
3 Article 39 of the Constitution. Our learned brother Justice Krishna Iyer has prepared a  
4 separate judgment specially dealing with this point. We must not be understood, to agree with  
5 all that he has said in his judgment in this regard. The need to interpret 39(b) again arose in  
6 **Sanjeev Coke vs Bharat Coking Coal**, while upholding the validity of Coking Coal Mines  
7 Nationalization Act 1972. The two other connected enactment, the Constitution Bench  
8 adopted the interpretation of Article 39(b) as enunciated by Justice Krishna Iyer in the  
9 **Ranganatha Reddy** case. This interpretation has also been followed by a division Bench of  
10 this Court in **State of Maharashtra vs Basantibai Mohanlal Khetan**. The  
11 interpretation put on Article 39(b) by Justice Krishna in **Ranganatha Reddy** case was not  
12 specifically assented to in the majority decision, but in **Sanjeev Coke** it is observation in the  
13 Judgment of Justice Krishna Iyer which has been followed. Having heard the Council's at  
14 length we are of the opinion that the views expressed in **Sanjeev Coke** case requires  
15 reconsideration, keeping in view the importance of the point and issue. Namely the  
16 interpretation of 39(b). It will be appropriate if these cases are heard by a larger Bench of not  
17 less than seven Judges, the paper... Your Lordships...

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Now it is very clear. **Ranganatha Reddy...**  
20 the occasion for a reference to nine Judges arises because **Ranganatha Reddy** was a  
21 decision of a Bench of Seven Judges. Now, you had the majority judgment of Justice Untwalia  
22 concurred in, on behalf of three other Judges, that makes it four, and Justice Krishna Iyer were  
23 concurred in with by two, so that makes it three. The majority Judgment says that we... there  
24 are certain issues which have been dealt with on by Justice Krishna Iyer on the interpretation  
25 of 39(b) and (c). We should not be read as having accepted his interpretation. Justice Krishna  
26 Iyer has specifically held that material resources of the community will also include private  
27 probability. Right. So, four Judges said, 'we are not expressing any view on what has been held  
28 by Justice Krishna Iyer'. Therefore, the occasion for a reference to nine, arose because clearly  
29 the views in **Sanjeev Coke** which follows **Ranganatha Reddy** is something that this Bench  
30 of five Judges doesn't agree with. But they had to refer it to nine for the reason that  
31 **Ranganatha Reddy** was seven and in **Ranganatha Reddy** though it's a view of the  
32 minority on the interpretation of 39(b) that has been followed in **Sanjeev Coke**. Absolutely.  
33 If you look at this now, it's, very clear that the ambit of the reference to nine Judges is squarely  
34 only on the content of 39(b).

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36 **SAMEER PAREKH:** Your Lordships is right. But there is something more that happens,  
37 which I'll just indicate...

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**CHIEF JUSTICE D. Y. CHANDRACHUD:** Whether 31C continues to subsist or not, or whether it has been revived, is not something which has been referred to us at all.

**SAMEER PAREKH:** Lordships, I'll indicate, there's one more reference order, and I'll just indicate it also refers to *I. R. Coelho*, which was then pending before nine Judges.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Ok. Let's just see that.

**SAMEER PAREKH:** I'll just indicate. My Lord may I have the final... So, this one is late, before seven Judges and My Lord recalls that time, the understanding was that you could only refer it to the next larger Bench. But My Lords may now come to **(2013) 7 SCC 522**, which is the final Reference Order, which is in Volume V, page 3409.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** 2013?

**SAMEER PAREKH:** It's 2013, Volume VII, **SCC 522**, Volume VII **SCC 522**, at Volume V, page 3409 PDF. My Lord, may I just start, first Bench of five learned Judges is referred to seven. Put shortly the question is as to the interpretation of 39(b) of the Constitution, which speaks of the distribution for the public goods, of ownership and control of material resources of the community. In *State of Karnataka vs Ranganatha Reddy* two Judgments were delivered in the judgment delivered by Krishna Iyer J, speaking for himself and two other Judges, the view was taken that material resources of the community covered all resources natural and man-made, publicly and privately owned. The other judgment delivered by Justice Untwalia on behalf of himself and three other Judges, did not consider it necessary to express any opinion with regard to 39(b). It was, however, made clear in this majority Judgment that the learned Judge did not subscribe to the view taken in respect of 39(b) of Justice Krishna Iyer. The view taken by Justice Krishna, *Ranganatha Reddy* was affirmed by a Constitution Bench in *Sanjeev Coke*. Now, in the course of the arguments before us, the learned Solicitor General for Union of India and the State of Maharashtra has drawn our attention to the Judgment of a Bench of nine learned Judges in *Mafatlal*. Speaking for himself and four other judges, Jeevan Reddy J said, that material resources of the community are not confined to public resources, but include all resources, natural and manmade, public and private owned is repeatedly affirmed by this Court. Now, My Lord, of course, we'll make our detailed submission. But this issue never arose in Mafatlal where the question was of unjust treatment.

**JUSTICE B. V. NAGARATHNA:** The question of refund?

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**SAMEER PAREKH:** Was of unjust refund, whether taxes, if they are here to be void, how do you return. Absolutely. 39 B did not arise at all. So, this issue never arose. These are just observations, and we will be submitting this as obiter. But be that as we it may continue. And reference was made to the case of **Ranganatha Reddy, Sanjeev Coke and State of Tamil Nadu vs L. Abu Kavur Bai**. Having given due consideration, we are of the opinion that this interpretation of Article 39(b) requires to be reconsidered by a Bench of nine learned judges. We have some difficulty in sharing the broad view that material resources of the community under 39(b) covers what is privately owned. Now, next paragraph is important, given that there is some similarity in the issue here involved and in **I. R. Coelho vs State of Tamil Nadu**, which already stands referred to a larger Bench, preferably of nine judges. We are of the view that these matters should be heard by a Bench of nine learned judges immediately following the year in **I. R. Coelho**. Now, I have to indicate this **Coelho** has nothing to do with 39(b)27. The issue there was, even though it's been put in the Ninth Schedule, are 14, 19 and 21 available to the extent they affect the basic structure and there are observations there, which My Lords may consider in this matter also on 31C. Also, it says even though you put it in the 9th Schedule, the trinity of rights under 14, 19, 21 can still be taken for the purposes of challenging a particular law, specific law. So there, of course, there was a Constitutional Amendment to add it to the 9th Schedule. Here, despite 31C as no such provision. There is observation in **Coelho** which says that I can still challenge and therefore we'll be pressing that point also. That despite the fact, even if My Lord holds that 31C survives, that it's protected by 39(b). My right to challenge under the trinity of 14, 19, 21 still survives, which is what **Coelho** has said so. We will make that good.

**JUSTICE B. V. NAGARATHNA:** **Kesavananda Bharati** they affirmed whatever was there prior to the judgment. Incidentally it is tomorrow, 24 April 1973. But anything thereafter has to meet the challenge.

**SAMEER PAREKH:** Absolutely. I'm grateful. But before My Lord, if thereafter held that even acts and statutes, not just constitutional amendment, cannot be violative of the basic structure and point out there are two direct judgments. That even acts on the standalone basis can be challenged on the ground that we have violate the basic structure. And **Coelho** now nine judges of My Lord's Court have felt the same. Now there are observation that 31C also this will apply in **Coelho** itself. But that issue did not squarely arise here, there.

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Look at the last two orders, which you have  
2 shown us, seven judge and then of five, the two orders really dwell on 39(b). There is really no  
3 reference to 31C nor is that point specifically referred to the Bench.

4

5 **SAMEER PAREKH:** Except in para six, in so far as they say await *Coelho*. So, *Coelho*  
6 would then be that, are those rights available?

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Because they probably wanted to await a  
9 *Coelho* because another nine judge.

10

11 **TUSHAR MEHTA:** *Coelho* must have been on the anvil of being listed. On the anvil of being  
12 listed that appears to be.

13

14 **SAMEER PAREKH:** No. I was also appearing on *Coelho*. It was not under the anvil of being  
15 listed. But we pointed out that the same issue arises there in the context of 31B, that even if  
16 you put that Act in the Ninth Schedule, you can still challenge it on the ground of violation of  
17 the basic structure. And that's the issue we raise here also, that even if it's protected by 31C,  
18 and we fail in all our other contention, it is still open. And that's the short issue we want Your  
19 Lordships to consider.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Why does a Bench of nine have to consider  
22 that?

23

24 **SAMEER PAREKH:** Because, in fact, the *Coelho* reference Order explains that but as nine  
25 judge Bench decided this issue for 31B. So, we will indicate, My Lord, as we.

26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It is tenuous.

28

29 **SAMEER PAREKH:** It is. To that limited extent, yes. Give me a moment. Three ways we  
30 also discuss that may I just. So, Your Lordships, we are just submitted two three possibilities.  
31 Lordship, sir. May I just, this is what we consider, I'll just place it before you and then you may  
32 consider as you, My Lords may.

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just do it from the ambit of the reference.

35

36 **SAMEER PAREKH:** I'll do that. But we thought there were three possibilities that arise in  
37 this case. The two judgments, *Sanjeev Coke* and *Abu Kavur Bai* are five judges.

1 **Ranganatha** is seven judges. But **Minerva... Mafatlal** judgment is nine Hon'ble judges.  
2 Now, if My Lords either can hold that **Mafatlal** is obiter, then it's open to My Lords to decide  
3 this issue. Otherwise, My Lords may have to consider whether it has to go higher to an eleven-  
4 judge Bench, in case My Lord is not in my.... doesn't hold that **Mafatlal** was obiter, and it's  
5 clearly obiter will try to make that good. In which case it's open to My Lords to decide this  
6 matter, is our first submission. My Lords will consider whether on **Mafatlal** issue, My Lords  
7 wants to consider that and we'll make it good that those were obiter observation, it had nothing  
8 to do with the issue at hand or it should go higher. That's one issue that My Lords will decide.  
9 On 39(b) and C My Lord, we are with My Lords that if 39(b) and C is decided, it can go back  
10 to five judges for consideration on 31C, whether it survives or not. But we would like to make  
11 our submissions on **Coelho** because **Coelho** specifically deals with the scope of challenge  
12 under 31B and C. Although 31B arose there, we do want to make our submission that the same  
13 principle will squarely apply for 31C. Because if it does, then my challenges under 14, 19, 21  
14 are still available even for these laws, even if protected under 31C.

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Then you can also argue that before...

17

18 **SAMEER PAREKH:** We can, we can.

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** [UNCLEAR].

21

22 **SAMEER PAREKH:** Lordships, we can.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Three judges or five judges.

25

26 **SAMEER PAREKH:** I will not disagree; My Lords is right. But we'll like to place **Coelho**  
27 and then My Lords may take a view on it.

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alright. So now, how do you want to begin?

30

31 **SAMEER PAREKH:** No, My Lords, we've drafted some propositions. I'll briefly indicate  
32 what all arises. Not all of this has to be decided by My Lords. But we'll just place what we wish  
33 to argue those issues. And then, if My Lord permits, I'm proposing to read the **Malpe**  
34 **Judgment** and then hand it to my colleague Mr. Andhyarujina. So, these are the two aspects.  
35 So may I just indicate these are the issues that we feel arise. Most of them, of course, will not  
36 have to be considered by this Bench. But I wanted to place these on, before My Lords. The first  
37 is, whether Article 31C of the Constitution of India survives after the judgment of this Hon'ble

1 Court in *Minerva Mills* and so and so striking down Section 4 of the 42nd Amendment Act.  
2 Now, whether Chapter VIII-A of MHADA has received the ascent of the President of India, as  
3 required, under the provision of 31C and as decided by the judgment of this Hon'ble Court in  
4 *Kaiser-I-Hind*, that is, reasons were given, et cetera, and they did not produce that whether  
5 the onus of proving that the ascent of the President was in compliance with *Kaiser-I-Hind*  
6 is on the state and whether they have discharged the burden. That again, squarely arises from  
7 the pleading, but we'll make submissions on that. Now, whether the material expression,  
8 material resource of the community occurring in 39(b) of the Constitution would include  
9 private properties and whether Chapter VIII-A of MHADA subserves the purpose of 39(b) and  
10 is for public good. So, one, because 39(b) has two parts, material resources for public goods,  
11 so, we are submitting on both. Now, whether Chapter VIII-A of MHADA and Maharashtra Act  
12 can be challenged under Article 14, 19 and 21 of the Constitution of India in light of *I. R.*  
13 *Coelho versus State of Tamil Nadu*. Even if Article 31C survives. In 7, whether the  
14 MHADA and Maharashtra intact are invalid, being contrary to 21 of the Constitution of India.  
15 Now on that we are again, I'm just indicating the point 21 is not protected 31C is only for 14,  
16 19. 21 is, 'Right to Life' and there are reports of the Respondents themselves, their committees,  
17 which say that there are a lot of landlords who are poor, not all landlords are rich and not all  
18 tenants are poor. Lot of landlords are put in their hard-earned income in building a house, and  
19 they're not even able to survive. All their reports, we place them on record is what will be  
20 arguing. So,

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** If you drive down Marine Drive right in,  
23 Mumbai, and you see all those buildings, the Art Deco buildings, most of them are tenanted?

24

25 **SAMEER PAREKH:** Your Lordships, all of them, in fact.

26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** All of them?

28

29 **SAMEER PAREKH:** All of them, in fact. My Lords on the rent of most of those apartments  
30 do not exceed Rs. 200 even today. In fact, initially they were all under Rs 80, the Act itself  
31 notes, and now they've gone up a little bit because of taxes, et cetera.

32

33 **JUSTICE B. V. NAGARATHNA:** Property is relatable to the annual letting value?

34

35 **SAMEER PAREKH:** No, some amount of compensation they allowed us, that's all out of the  
36 taxes. But we are bearing the tax also, which they are not paying. The tenants are not even

1 paying the tax that has gone up from time to time. And again, their report says that we are  
2 paying out of pocket. Most of us are in the negative.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Issue 4, 15 and 16. 4, you have said whether  
5 the expression material resources, the community occurring in 39(b) would include private  
6 properties. 15, whether the observations in para 86 of *Mafatlal* is *obiter dictum* and not  
7 binding, and 16 whether the judgment of the *Sanjeev Coke* could have upheld a certain  
8 observations made in the concurring view, that is you are referring to *Ranganatha Reddy*,  
9 but Article 39(b) of the Constitution, with which the majority opinion expressly did not agree  
10 instead of *Karnataka versus Ranganatha Reddy*.

11

12 **SAMEER PAREKH:** Lordship, says, no difficulty. But we'd like to place *Coelho* Judgment  
13 before My Lords, takes a final view that's all I'm saying.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What else Mr...?

16

17 **SAMEER PAREKH:** I just indicate what are the other issues very quickly. 8 and 9 relate to  
18 Article 300-A. This is also a development after the last referral order in clay tea plantation now

19

20 **SAMEER PAREKH:** ...If you take acquire property, it must be for public purposes and the  
21 compensation cannot be illusory.' So, on this ground also, we are submitting that we are  
22 entitled to succeed. So may I skip that. 11 - is again the *Coelho* point that I can challenge  
23 under... Then 12 - Where the Maharashtra Rent Act is on the face of this Hon'ble Court  
24 judgment in *Malpe Vishwanath* -void and is liable to be struck down.' That's the argument  
25 that if the standard rent provisions go, because of the prospective judgment, then MHADA  
26 itself will go in as a consequence. Then where the Maharashtra Rent Act - That's the writ  
27 petition of 660. Again, 'can go to a smaller Bench, where the Maharashtra Rent Act takes away  
28 the basis of *Malpe Vishwanath Acharya*. Then 14, is void... Chapter 8A. Then, My Lords  
29 have already seen Chapter 15-16. Then 17, whether Chapter 8A of MHADA can at all be treated  
30 as a law of public good or in the nature of land reform, or are *per se*, illegal and violative of the  
31 basic structure of the Constitution of India as it purports to transfer property from one private  
32 person to another private person. Then whether there is any evidence to show that all  
33 landlords are wealthy and tenants are all poor. Then, whether in view of report of 12th law  
34 Commission finding that not all landlords... Again, it's a factual. Whether the property is  
35 purchased through hard work of property owners and other predecessors can be treated as  
36 estates Like *Jagirdari*, *Inaamdari*, *Zamindari* - system which can be redistributed. Then  
37 whether Chapter VIII-A was enacted merely as a misconceived attempt to deal with their own

1 wrong, including *inter-alia*, freezing of range, failure to build adequate housing as also prevent  
2 disabling the landlord from maintaining the tenanted premises while failing to maintain the  
3 same themselves.' So, My Lords, these are not all the issues we are submitting before My Lord.  
4 My Lords, with that, I'll only point out one judgment, which is the **Malpe** judgment where My  
5 Lords, is already dealt with the Rent Act. And then I'll request Mr. Andhyarujina and to take  
6 over 31... No, you're taking 31C, right? Sorry. Lordships, now My Lords, may I just have...

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Who's arguing 39(b), though?

9

10 **SAMEER PAREKH:** Mr...

11

12 **TUSHAR MEHTA:** **Malpe** judgment is only on Rent Act and its validity. Your Lordships  
13 are not concerned.

14

15 **JUSTICE HRISHIKESH ROY:** It will not be convenient if we begin with the argument on  
16 39(b)...

17

18 **SAMEER PAREKH:** Lordships, we can do that.

19

20 **JUSTICE HRISHIKESH ROY:** Of course. We'll not prevent anyone to argue the other 31C.

21

22 **SAMEER PAREKH:** No difficulty. No difficulty. Then would My Lords want... I was only  
23 pointing out **Malpe** for a few facts. I can just point out those dates, and then that's all I want  
24 to do. A few dates so that the rest of the submissions will make more sense in light of that.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** About the relevance of **Malpe**... All right.  
27 What some dates you want to give us?

28

29 **SAMEER PAREKH:** Just dates. A few dates, I'll point out.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just quickly take them down.

32

33 **SAMEER PAREKH:** Lordships, they're not more than 8-10 dates, so I'll just indicate. So,  
34 this whole process started on 19-06-1939, when the Bombay Rent Reservation Act froze the  
35 rent with effect from 01-01-1939.

36

37 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 1939, what happened?



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**SAMEER PAREKH:** 19-6-1939 the Bombay Rent Reservation Act came. Rent Restriction Act came. It is the first law which froze the rent as on 01-01- 1939.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Froze the rent as of?

**SAMEER PAREKH:** 1st January 1939. Then there is the first Bombay Rent Act, came on 12th May, 1944, which is the full name is - 'Bombay Rent, Hotel Rates and Lodging Houses Rates Control Act.' Then 13th February 1948 is a Rent Act which was then considered in *Malpe* judgment.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Sorry. Bombay Rent Act was on 12th May 1944. Right?

**SAMEER PAREKH:** 12th May 1944. And then 13th February 1948. It was replaced by a new law. So, we are concerned with 13th February 1948. Then, My Lords, MHADA came again twice - 5th December 1977 was the predecessor MHADA Act and then the one we are concerned with is, 27th April 1986, which has Chapter 8A, which we are concerned with. Now I'll only then give the date of the judgments. Then the judgment in *Malpe Vishwanath Acharya* is 19 December 1997. And My Lord's the last date is first April 1998 is the Maharashtra Rent Act.

**JUSTICE B. V. NAGARATHNA:** Judgement is on?

**SAMEER PAREKH:** *Malpe*'s is on 19th December 1997.

And 1st April 1997 is the Maharashtra Rent Act. Just to give the broad dates, so that.... Grateful, My Lords.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you, Mr. Parekh.

**SAMEER PAREKH:** Thank you.

**JUSTICE HRISHIKESH ROY:** Mr. Parekh, the last date, Maharashtra Rent Act is...?

1 **SAMEER PAREKH:** 1st April 1998, with effect from 1st April 1998. In fact, after *Malpe*  
2 came, they came up with notification, extended it twice, we filed this writ petition, then they  
3 brought the Maharashtra Act and then they amended the writ petition.

4

5 **JUSTICE B. V. NAGARATHNA:** So, the 1988 judgement is with regard to which Rent Act  
6 of Maharashtra?

7

8 **SAMEER PAREKH:** Maharashtra Rent Act of 1948. Lordship.... Bombay Rent Act is '47, not  
9 '48. Lordship.

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Bombay Rents and Lodging House Act is '47.

12

13 **SAMEER PAREKH:** I'm grateful My Lord.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you Mr. Parekh. Yes, Mr.  
16 Andhyarujina?

17

18 **ZAL ANDHYARUJINA:** My Lord, I have noted everything, that Your Lordships have said.  
19 On 31C My Lord, I just wanted to say a few words with regard to *Coelho*, if Your Lordships  
20 permit. But before Your Lordships take a decision on the reference, My Lord. Of course,  
21 whether Your Lordships decide to hear it now, or whether Your Lordships, refer it down but it  
22 will then go to a Constitution Bench of Five Judges, My Lord, is a matter for Your Lordship to  
23 entirely decide. Your Lordship has seen the reference so, I'm not going to read them again.  
24 Your Lordships is, of course, right, is that the first reference from three to five My Lord, notice  
25 the 31C issue, not what I'm calling the dead letter issue about whether it is revived or whether  
26 it required validation. My Lord, in the subsequent reference in one sense that was noted but  
27 not mentioned again, and undoubtedly the reference to Your Lordships, today arises out of the  
28 last order. Now My Lord, it's a matter of construction about how Your Lordships, read that  
29 last order. And I quite appreciate, the Chief Justice's point that actually, the reference is on the  
30 *Mafatlal* judgment and the 39(b) point. But My Lord, I wanted for Your Lordships to  
31 consider this. I'm not sure that, My Lord, it is become clear in the order, what exactly the  
32 significance of *Coelho* is? Lord, I am fully aware of the fact that Your Lordships are fully  
33 seized of *Coelho*. But if Your Lordships, will hear me on that for two or three minutes,  
34 because...

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** *Coelho* right?

37

1 **ZAL ANDHYARUJINA: Coelho** only, because I believe it has a very significant bearing on  
2 31C and on the facts of this case. I'll just summarize it first. My Lord, **Coelho** itself was a case  
3 which was referred to nine judges. My Lord it was referred to nine judges and I will show Your  
4 Lordships, the reference. But as a result of inconsistencies which were noted in the judgments  
5 of **Waman Rao** between the then Chief Justice, Justice Chandrachud and Justice Bhagwati's  
6 judgment and also the judgment in... sorry, judgement in **Minerva Mills** and **Waman Rao**.  
7 I'll show Your Lordships that. Justice Bhargava, as he was then, Chief Justice Bhargava was  
8 then, what therefore referred the matter up. My Lord, the question that was framed before the  
9 nine judges in **Coelho** was with reference to 31B. It concerned the Tamil Nadu Act for  
10 acquisition of land, My Lord Gudalur Janmam Acts, so on and so forth. My Lord the question  
11 was framed on two basis. One is the question with regard to whether 31B is valid and the  
12 second was a question with regard to fundamental rights and with regard to the scope of  
13 fundamental rights and in particular Article 14, 19 and 21 of whether they are included in the  
14 basic structure. Now My Lord, as Your Lordships, know **Kesavananda** has been a decision  
15 which has been constantly evolving by a process of interpretation from time to time. Although,  
16 Lord the majority in **Minerva Mills** came very, very close to saying that 14 and 19 are a part  
17 of the basic structure, they didn't say so in terms. They went on then to strike down the  
18 amended portion of 31C and upheld the unamended portion of 31C. My Lord, this question  
19 has now been squarely addressed in the **Coelho** judgment. I will come straight to the point,  
20 the **Coelho** judgment now entrenches My Lord, there's a little bit of controversy, I'll come to  
21 that in a bit. But entrenches 14, 19 and 21 as part of the basic structure. Now, My Lord, first to  
22 put the point a little simplistically, Your Lordships are fully aware of 31C. My Lord, 31C is the  
23 safe harbour provision. In the event that 39(b) and (c) stand attracted, then there can be no  
24 challenge on the ground of 14 and 19. Your Lordships are also aware that originally there was  
25 14, 19 and 31, when the right to property got deleted, that was also consequently deleted. Now,  
26 My Lord if 14 has been held now to be a part of the basic structure, the real question that arises  
27 in my respectful submission to Your Lordship is how effective the validity of Article 31C ruled  
28 upon in **Kesavananda Bharati** remains. My Lord, I'll just tell Your Lordships why I say  
29 this. As Your Lordships are aware in **Kesavananda Bharati 31C**, the latter part was struck  
30 down, the declaratory part. The first part was, however, upheld. It was upheld not like  
31 everything about **Kesavananda Bharati** in a fascinating way. My Lord, six of the judges  
32 who believed in the unlimited power of the Constitution to amend, upheld it. Justice Khanna  
33 upheld it on a slightly different basis, drawing a parallel with 31A, although, as we all know,  
34 that Justice Khanna in fact believed in the implied limitation and the basic structure theory.

35

36 **ZAL ANDHYARUJINA:** Lord, that was interpreted, My Lord, in **Minerva Mills**. It was  
37 read through in **Waman Rao** as I'll show, Your Lordship. And we are now presented with

1 the effect of the *Coelho* judgment. Because, My Lord, the language of 31C... I mean, Your  
2 Lordship will just see the wide language... Lord, in books... no interference with 14 and 19 lies.  
3 So, ... and there's a lot to be said with regard to how you... Would your Lordships mind...

4  
5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Let's, read the....

6  
7 **ZAL ANDHYARUJINA:** If Your Lordship, will come to 31C. I have prepared a short note on  
8 *Coelho* also, just come to that in a bit. '31C - Saving of laws, giving effect to certain directive  
9 principles: Notwithstanding anything contained in Article 13, no law giving effect to the policy  
10 of State towards securing...' now, My Lord, this is the portion which was stuck down in  
11 *Minerva Mills* - 'all or any of the principles laid down in 39(4).' Therefore, Your Lordship,  
12 will read it in the old language, which says, 'in relation to 39(b) and...'

13  
14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 37 in our books...

15  
16 **ZAL ANDHYARUJINA:** Yes. Your Lordship is perfectly correct.

17  
18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The principles specified in Clause B of Clause  
19 C of Article 39.

20  
21 **ZAL ANDHYARUJINA:** Perfect, My Lord. So that is, My Lord, my revival argument...

22  
23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** ...'that'll be deemed to be void...'

24  
25 **ZAL ANDHYARUJINA:** ...'shall be deemed to be void on the ground that...' Now, My Lord,  
26 please note the sweep of this, My Lord, that it is inconsistent with or takes away or abridges  
27 any of the rights conferred by Article 14 and 19. For the latter italicized portion is the portion  
28 which was struck down in *Kesavananda Bharati*. So, My Lord, today, with the *Coelho*  
29 judgment, My Lord, it is very difficult to understand what force remains in Article 31C? 31C,  
30 undoubtedly valid as rule...

31  
32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Then, Mr. Andhyarujina, to argue that you're  
33 virtually then asking for a reconsideration of the correctness of *Kesavananda Bharati*.

34  
35 **ZAL ANDHYARUJINA:** No, no, I'm fully conscious of that, My Lord. That's an outrageous  
36 argument, and My Lord, the logical extension of the *Coelho* argument may take us to  
37 *Kesavananda Bharati*, that is true. But Your Lordships are presented with a 31C problem.

1 I have some solutions to that. My Lord, if the occasion arises, I will argue that. Because what  
2 meaning is left in 31C if we say that every aspect of 14 can be used as a challenge.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But we are a Bench of nine. We are bound by  
5 the principles which have been laid down in *Kesavananda Bharati* which upholds 31C as  
6 it was originally enacted.

7

8 **ZAL ANDHYARUJINA:** Correct.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And as originally enacted, 31C gave, as you  
11 rightly said, a safe harbour provision, in respect of a challenge to the laws giving effect to the  
12 Directive Principles containing 39(b) and (c) on the ground that it violates Article 14 and 19 of  
13 the Constitution. Now that has been upheld by a larger Bench of 13.

14

15 **ZAL ANDHYARUJINA:** By a Bench of 13 judges.

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** For us, that's now a dictum. That was a given  
18 that 31C is valid.

19

20 **ZAL ANDHYARUJINA:** I accept that, My Lord.

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Right. And therefore, there's no reason for us  
23 to go into the impact of *Coelho* on the correctness of the decision in *Kesavananda*  
24 *Bharati*.

25

26 **ZAL ANDHYARUJINA:** That is a very far-reaching proposition, Your Lordships are right.  
27 And against that suggestion, if at all I may read, My Lord, is of course, the *Minerva Mills*  
28 dicta, where actually they said that whatever be the case...

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** These walls are witnessed to what happened  
31 after *Kesavananda*, when a review was assembled in this very Court and then abruptly, it  
32 was discharged. Do not forget the history of our Court. We will now allow *Kesavananda* to  
33 rest where it is.

34

35 **ZAL ANDHYARUJINA:** No... Long, may rest in peace, undoubtedly.

36

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Not may rest in peace. But it is a vibrant part  
2 of our discourse as it is today because once we open up the canvas, you know, there will be...

3

4 **ZAL ANDHYARUJINA:** No, My Lord, I don't say that. Not just bear with me for a minute,  
5 My Lord. Now, My Lord, so the *Minerva* ...

6

7 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That 31C in its original form as upheld in  
8 *Kesavananda*... We will, of course, see *Coelho* for five minutes with you. No difficulty. We'll  
9 treat 31C as upheld in its original form by *Kesavananda Bharati*, to be the position which  
10 by Bench of nine judges, and then we accept it.

11

12 **ZAL ANDHYARUJINA:** Got accepted, My Lord. But may I just point out to Your Lordships,  
13 that *Coelho* presents a problem for Your Lordship, My Lord, in this case... in this sense. My  
14 Lord, what are we to do with *Coelho* if we accept the validity of Article 31C because, I mean,  
15 Your Lordships sees that it is quite obvious that 31C is now effectively emasculated as far as it  
16 comes up against 14 and 19. 14 and 19 challenged now, in view of the *Coelho* Judgment is a  
17 basic structure challenge. Lord, assume that 31C was brought in for the first time by an  
18 amendment today, it would be beyond the amending power of the Constitution, and being  
19 beyond the amending power of the Constitution, it be void. Now My Lord, I quite appreciate  
20 everything that Your Lordship has said, but it is a very serious issue which arises in the context  
21 of 31C. Now, I will show Your Lordship *Coelho*, but *Coelho* was a judgment actually under  
22 31B, or the question framed in paragraph 5 was under 31...

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Ninth Schedule.

25

26 **ZAL ANDHYARUJINA:** Correct. Ninth Schedule question. My Lord, they don't actually  
27 strike down 31B. In fact, what *Coelho* veers towards, is an exposition on fundamental rights.  
28 And there are some questions that arise. But one thing it does is that it entrenches these three,  
29 My Lord 14, 19 and 21.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Those laws which were inserted in the Ninth  
32 Schedule, as was the date of the judgment in *Kesavananda Bharati* are immune.

33

34 **ZAL ANDHYARUJINA:** Yes, Your Lordship is right.

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Those laws, which were inserted in the Ninth  
37 Schedule after the 24 April 1973, would be still amenable to a challenge under....

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**ZAL ANDHYARUJINA:** Which is exactly, if Your Lordship recalls what the majority also said in *Minerva Mills*, which is what....

**CHIEF JUSTICE D. Y. CHANDRACHUD:** *Waman Rao. Waman Rao.*

**GOPAL SANKARANARAYANAN:** In *Waman Rao* it was sustained, this view.

**ZAL ANDHYARUJINA:** My Lord, *Minerva Mills*. I will show Your Lordships. *Waman Rao* and *Minerva Mills*, both. The point that I leave Your Lordship with and the point for consideration...

**CHIEF JUSTICE D. Y. CHANDRACHUD:** You know, really speaking why should the Bench of nine go into these issues at all? You know, the first thing you ask yourself is, why nine? What is the occasion for nine and not seven? And the occasion for why nine, why not seven, why not five, why not three actually, the reason for the Constitution of a nine-judge Bench is obviously because there's something operating in a seven judge Bench, which is a matter of concern. Now, actually, in this case *Ranganatha Reddy*, the Bench of seven has not said that 39(b) will include resources of a private nature, right?

**ZAL ANDHYARUJINA:** Majority...

**CHIEF JUSTICE D. Y. CHANDRACHUD:** In fact, it is quite to the contrary. Justice [UNCLEAR] specifically in his majority opinion, keeps that issue open, saying that we are not...

**ZAL ANDHYARUJINA:** Agreeable with...

**CHIEF JUSTICE D. Y. CHANDRACHUD:** We shouldn't be construed to have agreed with Justice Krishna Iyer's viewpoint. The problem... Yes. There's a specific paragraph on that.

**ZAL ANDHYARUJINA:** Yes, My Lord.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Now, the problem arose because *Sanjeev Coke* lifted Justice Krishna Iyer's perception on the interpretation of Article 39(b) and made it a Bench of five. Now, it could have been resolved by seven also. It could have been resolved by seven by saying that look what was done in *Sanjeev Coke* was plainly incorrect because it

1 overlooks that the view of Justice Krishna Iyer was a view of a minority on that subject or at  
2 least a plurality and not a majority in *Ranganatha Reddy*. But the seven judges thought  
3 that we should refer it to nine only because in the meantime, *Mafatlal* had come. And  
4 *Mafatlal* had that observation para 86. Now if we come to the conclusion that look, that  
5 observation in *Mafatlal* is obiter because *Mafatlal* was really dealing with unjust  
6 [UNCLEAR]. There's an observation that would end the issue on *Mafatlal*, one. Two, if we  
7 then construe the judgment in *Sanjeev Coke* to the extent of interpreting *Ranganatha*  
8 *Reddy*, we'll say that the Bench in *Ranganatha Reddy*, the seven-judge Bench has not laid  
9 down this principle at all as a principle of Constitution Law. Of course, we are a Bench of nine  
10 we can still look at the interpretation of 39(b), whether it will apply cover private property as  
11 well. And you may argue that, that 39(b) should not cover -- material resources of the  
12 community cannot mean material resources of a private person. That is something which you  
13 can certainly argue before us.

14

15 **ZAL ANDHYARUJINA:** I leave it up to Your Lordship. As I said, it is your lordship's  
16 reference...

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Going into the 31C argument, here of course  
19 we are 45 minutes short of lunch. We'll all have a conversation between ourselves.

20

21 **ZAL ANDHYARUJINA:** But in the meantime. Yes, My Lord, I fully appreciate what Your  
22 Lordships have said and it is Your Lordship's order of reference, that is for Your Lordships to  
23 decide. And of course, the 39(b) point can get us home as much as the 31C point as well. So,  
24 My Lord, that stands.

25

26 **JUSTICE B. V. NAGARATHNA:** 31B is essentially a validation provision. They wanted to  
27 validate certain things by virtue of that...

28

29 **ZAL ANDHYARUJINA:** The Ninth Schedule. Ninth Schedule. Yes.

30

31 **JUSTICE B. V. NAGARATHNA:** It has a restrictive scope also. 31B has a restrictive scope.

32

33 **ZAL ANDHYARUJINA:** Yes. What Your Lordship say resonates with me. In fact, that is our  
34 argument Mr. Devarajan will make it for us. That actually, it is difficult to say that private  
35 property falls within 39(b). My Lord, that the so-called concurring judgment, it's called a  
36 concurring judgment delivered by Justice Iyer, Justice Krishna Iyer, where he says that, "I  
37 agree with everything, but it's such an important issue, so I want to say something more on it".



1 He then slightly extends the principle in an axiomatic way to say that actually private property  
2 is obviously a part of 39(b), and as Your Lordships have rightly pointed out, subsequent  
3 judgments have picked up that observation which was made by Justice Krishna Iyer. If at all,  
4 the consequence the impact on this case is that it is not a part of private property, then a large  
5 part of our challenge has a good chance of succeeding. So, that is how the impact lies on our  
6 case and Your Lordships, are absolutely right about 39(b). I don't think I can say more on 31C.  
7 Your Lordship's interpretation of the reference order, of course, is perfectly correct. My Lord,  
8 I had only thought that the impact of *Coelho* was something that required consideration by  
9 Your Lordships, because the problem with *Coelho*...

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Let's read *Coelho*. Can you show us *Coelho*?

12

13 **ZAL ANDHYARUJINA:** Can I show Your Lordships?

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Let's read *Coelho*. Because...

16

17 **ZAL ANDHYARUJINA:** In the time left...

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes, yes.

20

21 **ZAL ANDHYARUJINA:** I've prepared a very short note, but I wonder, would Your  
22 Lordships like to see the judgment itself? That might be better.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You have your note here?

25

26 **ZAL ANDHYARUJINA:** I have a note. We have extracted, actually, because all these  
27 judgments are so long so, I took the liberty of making some extracts. It's uploaded. It's  
28 uploaded.

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Is it uploaded?

31

32 **ZAL ANDHYARUJINA:** Yes. It's actually comprehensive in the sense that it's...

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Read the note.

35

36 **ZAL ANDHYARUJINA:** Yes. If Your Lordship will... if the Court will, kindly furnish Your  
37 Lordship, with an email sent by my learned friend, Mr. Parekh My Lord, at 09:56 this morning.

1

2 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Article 39(b) in that dichotomy, that 39(b) can  
3 never include 'private property'. That would be very artificial. Because when material  
4 resources of the Community are agnostic to title, it doesn't mean that...Well, with a title... it  
5 doesn't make that distinction between a case where title rest in a private person as opposed to  
6 title in the Community.

7

8 **ZAL ANDHYARUJINA:** I see that point. Your Lordship is right.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Given, for the case, mines for instance, they  
11 may be private mines. But in a broader sense, these are material resources of the Community.  
12 That title may rest in a private individual, but these, therefore, for the purpose of 39(b), our  
13 reading should not be constricted, but must have that broad understanding of 39(b).

14

15 **ZAL ANDHYARUJINA:** Right. So, in a political sense.

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Or take a case like ... take the case like these  
18 buildings in Mumbai. Technically, you're right that these are privately owned buildings. What  
19 was the reason for the law? We are not commenting on the legality or the validity of the law.  
20 That will be tested independently. The reason why the State Legislature came out with this  
21 was that these were all buildings, old buildings of 1940. With the kind of monsoon in Mumbai,  
22 these buildings get dilapidated because of the saline weather. You know it better than me.  
23 Because of the saline weather that, you know, the fact that the rents were so meagre that the  
24 landlords had no motive to at all to repair them. Where will the landlord poor fellow find any  
25 money to repair the buildings? And the tenant was sitting tight. That no one tenant would have  
26 the wherewithal to repair the whole building. Therefore, the Legislature had to... So, these are  
27 in a sense... what do you mean by material resources of the Community? Material resources of  
28 the Community would mean resources in which the Community has a vital interest. If a  
29 building falls, the Community is directly affected, because who dies when a building falls? The  
30 occupants die. Therefore, we must distance it from a title.

31

32 **ZAL ANDHYARUJINA:** My Lords, there is no doubt...

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** ...common good

35

36 **ZAL ANDHYARUJINA:** There is no doubt that it is not a question which is free from debate.  
37 And there is no doubt that these considerations have to be taken into account.

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**CHIEF JUSTICE D. Y. CHANDRACHUD:** Because 39(b), we have to answer as a Bench.

**ZAL ANDHYARUJINA:** But that is a specific point raised by Your Lordship.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** We were just discussing between ourselves. One way would be to say, accepting what the reference order says that, "Look. *Ranganatha Reddy* didn't decide this issue. *Sanjeev Coke* was wrong in picking up on the judgment of the minority and then treating it as a Bench of..

**ZAL ANDHYARUJINA:** As a majority.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** As a principle, and applying it in *Sanjeev Coke*. But after, even if, assuming we do that, then what? The point still survives. And I think with this issue we should resolve....

**ZAL ANDHYARUJINA:** No, Your Lordship has to grapple with the issue substantive 39(b).

**CHIEF JUSTICE D. Y. CHANDRACHUD:** ...39(b), the ambit of 39(b) is something which we should decide. That is the scope of the reference in fact. The way we take it that Mr. Devrajan would be arguing that 39(b) cannot include 'private property' at all. And you would be saying that it can, right? But obviously, you'll be addressing us on the matters of first principle also?

**RAKESH DWIVEDI:** Yes, of course.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** You're not going to only rest it on *Sanjeev Coke*, because...

**RAKESH DWIVEDI:** No, no, on first principles also. Your Lordship may decide the ambiguity.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** We have to decide it. We're a Bench of nine, we are not bound by any of these.

**RAKESH DWIVEDI:** That's the reference Your Lordship has to decide. And it will be better otherwise, again and again the same thing.

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**CHIEF JUSTICE D. Y. CHANDRACHUD:** There will be some finality to this because what's the point in again having a ping pong bottle that will go before seven. Then seven will again have to be interpreted what *Mafatlal* meant. At least we in 9, we can at the least say that *Mafatlal* was obiter.

**RAKESH DWIVEDI:** Yes.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** And then decide it. We may still come to the same conclusion. But 7 can't, then 7 will be bound by even the obiter of *Mafatlal*.

**RAKESH DWIVEDI:** So, it may not be enough to say that *Mafatlal* is obiter and leave it at that and send it back. That may not be appropriate.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** You will have to decide it.

**RAKESH DWIVEDI:** But you may decide.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** It's desirable that... I thought we laid the card well there that ultimately, let's not again revisit the correctness of the constitutional validity of 31C on the basis that, *Coelho* would have some bearing on the correctness of what, because *Coelho* was doing it in 31. In the context of 31B, *Coelho* was bound by *Kesavananda Bharati*.

**ZAL ANDHYARUJINA:** I've consulted my colleagues also, and we have no objection. Either way, we are happy either way. If Your Lordship was to hear us, we are happy. If Your Lordship sent me home early, I am happy with that. My Lord, on the other hand...

**CHIEF JUSTICE D. Y. CHANDRACHUD:** As an act of judicious statement, we should be very careful about, you have a canvas which may then have untold ramification.

**ZAL ANDHYARUJINA:** My Lord, I fully see that. I fully see the significance of the point and we have some arguments on *Coelho*, which we can run....

**CHIEF JUSTICE D. Y. CHANDRACHUD:** But you have put in so much of hard work.

**ZAL ANDHYARUJINA:** No, I'm very happy to....

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**CHIEF JUSTICE D. Y. CHANDRACHUD:** In any case, there's something interesting.

**ZAL ANDHYARUJINA:** I will show it to Your Lordships in a few minutes.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** We will see your note.

**ZAL ANDHYARUJINA:** Yes, My Lord. And just to step back from that. So, My Lord, our position...

**CHIEF JUSTICE D. Y. CHANDRACHUD:** You have the academically oriented members of the bar, the attorney himself, Mr. Dwivedi. In any case, Mr....

**R. VENKATARAMANI:** On a lighter note, I was telling them, all of us are material resources of the community.

**GOPAL SANKARANARAYANAN:** The only issue is not to be distributed on the private side.

**ZAL ANDHYARUJINA:** I think the compliment should be paid back to the Bench, My Lord.

**JUSTICE B. V. NAGARATHNA:** ....resources is the question.

**ZAL ANDHYARUJINA:** Speaking for ourselves, My Lord, we are perfectly content with that. My Lord, we will argue the *Coelho* point before a smaller Bench, once Your Lordship takes a view on 39, there's no problem with that. My Lord, we have various ways to deal with *Coelho*, so we can do that. There's no problem. If Your Lordship would like to see *Coelho*, I'm happy to show Your Lordship what we have. It is actually a very, very interesting issue. It is a very interesting issue for more reasons than one. I won't take more than 20 minutes.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Yeah, of course. 31B, of course, creates an immunity for acts in the Ninth Schedule.

**ZAL ANDHYARUJINA:** Yes.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** But now, how do we apply the logic of *Coelho* to 31C?

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**ZAL ANDHYARUJINA:** That is the point. Now, My Lord, so, let me address Your Lordship first on that. So, as I pointed out to Your Lordship, that *Coelho*, and the question that is also framed there, is actually a question which revolves around 31B. Now, some scholars scholarly critique and criticism of *Coelho*, has been precisely this that, it has not really answered the question with regard to 31B, at least to the fullest extent. But what *Coelho* did was to make a very clear statement on what is included in the basic structure as far as these three rights are concerned, 14, 19 and 21. I think it would be open once again to some comment about whether it actually captured everything that it said in the judgment, in the conclusion. Because in the judgment, it does suggest that, in fact, there are other fundamental rights which could also be entrenched in the basic structure, but it doesn't actually pick them up in the conclusion. My Lord the other aspect of *Coelho* which, with the greatest of respect, I say to the learned judges, they've laid out a very complicated test for testing 14 against the relevant law. My Lord, they have laid out two tests. One is the 'rights test' and the second is the 'essence of rights test', which they draw back to *Nagraj's* case, Justice Kapadia's judgment. My Lord, when those two tests will apply, is also alluded to in *Coelho* and it is a difficult to understand a part of *Coelho*, where the suggestion is that the 'rights test', which they also call the 'right/impact test', will apply where an entire chapter of the Constitution is abrogated, whereas the essence of rights test will apply to an individual article which stands affected or abrogated. My Lords subsequent judgments of Your Lordship's Court, have been brought with the greatest of respect, a little cloudy about what exactly is the scope of those two tests also. My Lord, in my respectful submission at least one judgment has mixed up the two tests as well, as I'll show to Your Lordships. So, My Lord, *Coelho* itself gives rise to several questions. I fully appreciate the fact that this may not be the right forum to tackle *Coelho* in its entirety. But perhaps my attempt today can be to show Your Lordship that an appropriate opportunity, My Lord, there are some creases which need to be ironed out in the *Coelho* judgment.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** If you are taking 20 minutes, let's look at it.

**ZAL ANDHYARUJINA:** I'll try to quickly deal with it. If Your Lordship, will have a look at my note. Do Your Lordships have my notes? So, if Your Lordship sees the index of my note, My Lord, it is II and My Lord, I have tried to make it comprehensive with regard to what I want to say with regard to *Coelho*. I just want to show Your Lordship, after that one or two paragraphs in *Coelho* which are of particular significance.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

1 **ZAL ANDHYARUJINA:** My Lord, in paragraph 1, My Lord, I've just set out what Your  
2 Lordships have already read. In paragraph 2, I have dealt with the reference... My Lord,  
3 paragraph 2. So, My Lord, first is the reference in **Coelho**, why was it referred. The judgment  
4 in **I. R. Coelho**...

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6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Para 2, right?

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8 **ZAL ANDHYARUJINA:** Yes, para 2, My Lord it's at page 27, pagination, top right-hand  
9 side, looks at something like this.

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11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes. Just go to para 2...

12

13 **ZAL ANDHYARUJINA:** To para 2. So, My Lord, we are in para 1. I follow My Lord. We can  
14 follow it here. Please scroll down to paragraph. Yeah, but the judgment in **I. R. Coelho** notice  
15 that there were apparent inconsistencies in the judgment in **Waman Rao vs Union of**  
16 **India** in particular between the judgments of Chief Justice Chandrachud and Justice  
17 Bhagavati. See paragraph 3 of **I. R. Coelho** supra. Accordingly, the five judges in **I. R.**  
18 **Coelho** stated that the judgment in **Waman Rao** needs to be considered by a larger Bench  
19 so that the apparent inconsistencies therein are reconcile and it is made clear, whether an act  
20 or regulation, which or a part of, which is, or has been found by this Court to be violative of  
21 one or more of the fundamental rights confirmed by Article 14, 19 and 31 can be included in  
22 the Ninth Schedule, or whether it is only a constitutional amendment, amending the Ninth  
23 Schedule, that damages or destroys the basic structure of the Constitution that can be struck  
24 down. So, Your Lordship notes the question as formulated, it's slightly changed when the nine  
25 judges actually dealt with it. Further, the five judges in **Coelho** also noted that the decision in  
26 **Bhim Singhji** case will also have to be considered by the larger Bench for the purpose of  
27 arriving at a conclusion aforementioned. My Lord, just by way of a temporal context, Your  
28 Lordship is aware, My Lord, **Waman Rao**, **Minerva Mills** were 1980, **Minerva Mills** July  
29 1980, **Waman Rao** November 1980...

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31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Interim order pronounced in the same day  
32 Ninth May 1980?

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34 **ZAL ANDHYARUJINA:** Exactly, My Lord. Interim order pronounced on the same day,  
35 reasons given separately, but one before the other... but unusual of great academic interest for  
36 various reasons. 'Magisterial dissent by Justice Bhagavati in **Minerva Mills** picked up in  
37 **Sanjeev Coke** ' as Your Lordship notes. **Waman Rao**, My Lord, deals with the unamended

1 Article 31C, upholds it not because of *Kesavananda Bharati* but on independent  
2 reasoning, which is in parity with upholding Article 31(a) on agrarian reforms. On the other  
3 hand, My Lord, in *Minerva Mills*, an interesting point, that the Sick Industries Act, which  
4 was challenged there, was actually an act which took effect prior to the amendment to 31C. But  
5 yet 31C was struck down, My Lord, on the annual of 14, 19 and 21. I think that is what is  
6 referred to broadly also in this. Now, My Lord, the judgment in *I. R. Coelho*...and I've put  
7 here, actually, what the question was, and the facts to allow us to actually understand what  
8 was decided - 'The matter was duly referred to a Bench of nine judges. The judgment is  
9 reported in so and so... The challenge before this High Court was that the Gudalur Janmam  
10 Estate abolition and conversion into Ryotwari Acts 1969 insofar as it vested forest lands in the  
11 Janmam Estates in the state of Tamil Nadu, was struck down by this Court in the *Balmadies*  
12 *Plantations Ltd.* because this was not found to be a measure of agrarian reform protected  
13 by 31(a) of the Constitution. Section 2(c) of the West Bengal Land Holding Revenue Act, '79  
14 was struck down by the Kolkata High Court as being arbitrary and therefore unconstitutional,  
15 and the special leave petition filed against the judgment of the State of West Bengal was  
16 dismissed by the Constitution 34th Amendment Act. That Janmam Act, in its entirety, was  
17 inserted in the Ninth Schedule by the Constitution 66th Amendment Act. The West Bengal  
18 Land Holding Revenue Act in its entirety was inserted in the Ninth Schedule. These insertions  
19 were the subject matter of challenge before the five-judge Bench.' So, My Lord, a very  
20 troublesome aspect of the Ninth Schedule was that after a Court had set aside a statute, despite  
21 the Constitutional basis of it being set aside, not being altered by Parliament, they could simply  
22 validate it, by putting it into the Ninth Schedule. That has been long the criticism of the Ninth  
23 Schedule. 'The contention heard before the Constitution Bench was that the statutes, inclusive  
24 of the portion thereof, which had been struck down, could not have been validly inserted into  
25 the Ninth schedule. The judgment...' Now, My Lord, the question, Your Lordship, will  
26 immediately note a slightly different question, from the question referred - '...the fundamental  
27 question, as My Lady, pointed out, but on and after 24th April 73, whether the basic structure  
28 document was propounded, it is permissible for Parliament under Article 31B to immunize  
29 legislation from Fundamental Rights by inserting them into the 9th Schedule. And if so, what  
30 is the effect on the power of judicial review of the Court.' So, the question frame, not against  
31 me, on the 31C point, is that it was squarely a 31(b) question which was framed. Now, please  
32 see now, how it was answered. Now, I'll take Your Lordships straight to the conclusions.  
33 Longish judgment...150 odd paragraphs. In conclusion, we hold that a law that abrogates or  
34 abridges rights guaranteed by Part III of the Constitution may violate the basic structure  
35 doctrine or it may not. So, not every part of Part III is a part of the basic structure. A classic  
36 example, what I've often puzzled about is 18 titles. It seems to be an odd inclusion in Chapter  
37 III. But it seems to be strange to say that it is an inalienable human right, et cetera. So, they've



1 noticed that. They said - Not every part of Chapter III is actually entrenched. 'If the former is  
2 the consequence of law, whether by amendment of any article of Part III or by an insertion in  
3 the Ninth Schedule, such law will have to be invalidated in the exercise of judicial review power  
4 of the Court. The validity or invalidity would be tested on the principles laid down in this  
5 judgment the majority judgment in **Kesavananda Bharati** read with Indira Gandhi's case,  
6 requires the validity of each new Constitutional Amendment to be judged on its own merits.  
7 The actual effect and impact of the law on the rights guaranteed under Part III has to be taken  
8 into account for determining whether or not it destroys the basic structure. The impact test  
9 would determine the validity of the charge.' Now the impact test is viewed, what's called,  
10 interchangeably, the rights test or the impact test. 'III. All amendments made to the  
11 Constitution after 24th April '73, the date of **Kesavananda Bharati**, by which the Ninth  
12 Schedule is amended by inclusion of various laws therein, shall have to be tested on the  
13 touchstone of basic and essential features of the Constitution as reflected in Article 21 read  
14 with 14, 19 and the principles underlying them. To put it differently, even though an act is put  
15 in the Ninth Schedule by a constitutional amendment, its provisions would be open to attack,  
16 on the ground that, they destroy or damage the basic structure of, if the Fundamental Rights  
17 or the rights taken away or abrogated pertain or pertain to the basic structure. Justification  
18 for conferring protection, not blanket protection, on the laws included in the Ninth Schedule  
19 by constitutional amendment shall be a matter of constitutional adjudication. By examining  
20 the nature and extent of infraction of a fundamental right by a statute sought to be  
21 constitutionally protected and on the touchstone of Basic Structure Doctrine as referred to in  
22 Article 21 read with 14 and 19 by application of the rights test.' Now My Lord, here comes the  
23 second test. 'And the essence of right test taking a synoptic view of articles in part 3, as held in  
24 Indira Gandhi's case. Applying the above test to the Ninth Schedule laws, if the infraction  
25 affects the basic structure, then such laws will not get protection of the Ninth Schedule. This  
26 is our answer to the question referred to us vide order 14999 in **I. R. Coelho and State of**  
27 **Tamil Nadu.**' So far, it would be difficult to say that this is a 31C judgment, this is very much  
28 a 31B judgment, I fully appreciate that. My Lord, V, 'if the validity of any Ninth Schedule law  
29 has... sorry, it has already been upheld by this Court' I'm so sorry, small error. 'It would not be  
30 open to challenge such law again, on principles declared by this judgment.' That was the  
31 pernicious effect of 31B. 'However, if a law held to be violative of any rights in part 3 is  
32 subsequently incorporated in the Ninth Schedule after 24th April '73, such a violation  
33 infraction shall be open to challenge on the ground that, it destroys or damages the basic  
34 structure. As indicated in Article 21, read with Article 14, and 19 and the principles underlying  
35 thereunder, My Lord, actions taken and transaction finalized, as a result of the impugned acts,  
36 shall not be open to challenge.' Now My Lords, some of the salient features are set out here.  
37 My Lord, before I go to the salient features, Your Lordship knows enough of the judgment.

1 Just to take a view, I'll take Your Lordships to my submissions on this and come back. The  
2 salient features, I must confess to plagiarism. I have taken them from my learned friend Mr.  
3 Devrajan's note, which he had kindly shared with me. He had done such a masterly job of it. I  
4 saw no reason to alter it in any way. May I take Your Lordships, straight now to the conclusions  
5 that I have drawn in paragraph 9. I'll come back if necessary, to the salient features. But  
6 broadly speaking, what the judgment does, is that it broadens the defence that is given by  
7 fundamental rights. It is said, it is no longer on isolated pools. It should be viewed as the  
8 principal controlling influence over the amending power. That is the broad thrust of what this  
9 does. But there are certain observations with regard to 31C, I'll come to now. The conclusions  
10 I have drawn are these. My Lord, the conclusions that can be drawn from the judgment in **I.**  
11 **R. Coelho** are as stated below. 'When a law abrogates or abridges rights granted by part 3 of  
12 the Constitution, it may or may not violate the basic structure doctrine. The test to be applied  
13 is either the rights test or the essence of rights test. The rights test is as under. First, the Court  
14 must test whether there is a violation of part 3. And second, if such a violation is found, its  
15 impact must be examined in terms of its effect, and substance, to see whether it destroys the  
16 basic structure of the Constitution. In the event it does, then I quote, "invalidation has to  
17 follow". The essence of right test is explained in **M. Nagarajan's** case, within part 3, 14, 15,  
18 19, 20, and 21', Your Lordship noticed that this was not recognized in the conclusion, but it is  
19 in the body of the judgment, '... are recognized as a part of the basic structure, the validity of  
20 31A and 31C were not questioned, and accordingly expressed... sorry, expressly held to be  
21 valid. This is the interesting observation, despite the denial of Article 14, and on the basis that  
22 these articles have *indicia*, which is not there in Article 31B. Now, some observations on the  
23 impact on the present case, and Your Lordship, will take all of this in the spirit that, I accept  
24 what Your Lordship say, and it may or may not be decided by Your Lordships. Not applying  
25 the essence of rights test, not essence of rights test, slightly different from the rights test, My  
26 Lord summarized to mean that, we must go behind the principles, with each of the  
27 fundamental rights. I had thought that, a reference to essence would be a narrowing down of  
28 the right, but actually it is a broadening of the right. What it says is that we must go by the  
29 principle of the right. So, we must read the Constitution as a whole for that. So, Article 14  
30 should not be read, for example, in a formalistic manner. We must read it in a broad manner  
31 in accordance with the spirit of Article 14. Applying the essence of right test since '21, read with  
32 14 and 19, the principles underlying them have been held to be a part of the basic structure.  
33 Article 31C, insofar, as is inconsistent with, or abridges rights under Article 14, destroys the  
34 basic structure even applying the rights test, the same result follows. Accordingly, the  
35 consequence is that invalidation of 31C has to follow. Now, this is controversial, I see that. But  
36 let me set out my thought process for Your Lordship. There was no challenge to 31C in **I. R.**  
37 **Coelho**. The statement with regard to 31 A and 31C, and the fact that they differ from 31 B

1 should be understood in that context. In the present case, the question of 31C squarely arises,  
2 and other things being equal, but what I mean is, if you exclude **Kesavananda**, et cetera,  
3 and subject to what is stated below, it is open to this Hon'ble Court of nine judges to examine  
4 the validity of 31C. This is especially so as **Coelho** has observed that 31C results in a denial of  
5 Article 14. The determination of the validity of 31C in **Kesavananda Bharati** is however  
6 binding. 31C was upheld by a majority of seven judges, six judges and six judges as... sorry, six  
7 judges, Chief Justice Ray, Palekar Dwivedi, Mathew Beg and Justice Chandrachud as he was  
8 then held that, it should be upheld because of the amending power of Parliament was absolute  
9 and unlimited. Justice Khanna, even on the basis the limited power to amend upheld the  
10 validity of Article 31C. In this regard see, Justice Bhagavati in **Minerva Mills**. He has done  
11 a masterful analysis of this aspect. The impact of the judgment of **Coelho** is, however, to  
12 render 31C without any force. The validity of 31C, while binding, is a matter of precedent, is  
13 depleted of purpose. There's some follow up also My Lord, which is there. Follow up all  
14 concerns that test. But if Your Lordships are not going into it, My Lord, it may not be very  
15 relevant. So, My Lord, this is the issue with regard to **Coelho**. My Lord,  
16 with the greatest of respect My Lord...

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you, Mr. Andhyarujina.

19

20 **ZAL ANDHYARUJINA:** Grateful sir.

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes, Mr. Devrajan? Now, we are going to be  
23 arguing the 39(b) point, basically.

24

25 **H. DEVRAJAN:** With Your Lordship's kind permission. Before I attempt to interpret 39(b),  
26 I would request Your Lordship to have a look at Article 39. The state shall in particular direct  
27 its policy. My Lord, our case is, that if it's a policy of the state, it can't be restricted to a few  
28 wards and municipal corporations, that's our first case. Our first point is on the question of  
29 policy?

30

31 **JUSTICE RAJESH BINDAL:** That will be a ground to challenge the activity the act also no?

32

33 **H. DEVRAJAN:** The Act is under challenge My Lords.

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That is before the Bench which will hear the  
36 challenge.

37

1 **H. DEVRAJAN:** I bow before Your Lordships, but when it comes to an interpretation, My  
2 Lords, one point that Your Lordships have repeatedly been saying, that if we feel that it's an  
3 academic question, we will not decide it. The point I'm trying to make here is two-fold. One,  
4 before we go to question whether private property should be material resources of community  
5 or not, the question that we need to consider is, what is material resources? One, and two, in  
6 respect to the matters before Your Lordships, with their material resource, I fully bow to My  
7 Lord, the Chief Justice said we are not entitled to the property. We are on, whether it's the  
8 resource of the community. Again, the question here is not just resource of the community. Is  
9 it a material resource of the community? I am emphasizing the words here, My Lords, I want  
10 policy and I want material resource. Before I come to the question whether private can be  
11 included or not, this question might kindly be considered.

12

13 **JUSTICE B. V. NAGARATHNA:** You must also bear in mind; material resources of the  
14 community are in the context of distribution.

15

16 **H.DEVRAJAN:** I bow before Your Lady. I bow before Your Ladyship's suggestions, because  
17 our case further when we go through, I take the liberty of taking Your Lordships through the  
18 Act. Only thus, Chapter VIII-A, because that might clarify quite a few points. Is there a  
19 distribution of control? Is there a distribution of material resources? Now material resources  
20 once I can zero down and say that, material resource should be a cut resource which produces  
21 goods or services for the community. If it does not produce goods or services, it would not fall  
22 within the category of material resources. That is my humble submission for Your Lordships  
23 kind consideration. Here, My Lady, what is the situation? The situation is that a cess was levied  
24 on these landlords, and tenants for carrying out structural repairs. The State says, it is our duty  
25 to carry out structural repairs. When I say State My Lord, I refer to the board. If they don't  
26 carry out structural repairs, they don't give me the wherewithal to carry out repairs. My rent  
27 is frozen at 1940 levels. The cost of all building materials, construction materials have shot up  
28 and I've not put in a position to carry out a test, would such buildings form a material resource,  
29 much less that of the community? This is a question which I would try to satisfy Your  
30 Lordships, that this is not a material resource, much less of the community. That's the first....

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Clause B, Clause B has four aspects. The  
33 primary aspect is material resources of the community. What is it dealing with? It is dealing  
34 with the distribution of the material resources of the community. What facet of distribution is  
35 it dealing with? It is dealing with ownership...

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37 **H. DEVRAJAN:** And control.

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**CHIEF JUSTICE D. Y. CHANDRACHUD:** And control, because are so distributed, qualifies ownership and control.

**H. DEVRAJAN:** Correct.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Ownership and control of what? Of the material resources...

**H. DEVRAJAN:** And for what purpose?

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Distribution of what? Distribution of the ownership and control of the material.

**H. DEVRAJAN:** Material resource. Now we are...

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Now, what is the object to subserve the common good and the fact that the legislature, that the Constitution uses the expression 'ownership' and 'control' is very significant. 'Ownership' refers to the title or the vesting of the title. 'Control' is much broader in its understanding because it's not confined to title.

**H. DEVRAJAN:** Here My Lords, I'm raising two issues for Your Lordships, kind consideration. The first, as I already indicated in My Lord, when the Constitution says that the state policy of the directives policy, now would it be only for the city of Bombay, would it be only for the district of Nasik, or should it be, that policy should be over the state? This is the primary question.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** That wouldn't worry us because the state can always make an under-inclusive classification. Then you say that, look, the condition of the buildings in Mumbai is so unique that you don't have to legislate, you don't have to regulate the entirety of the state. That the state can easily... that is not an issue at all...

**H. DEVRAJAN:** My Lord, if it were a regulation, My Lord, I would have bowed to Your Lordships' suggestions immediately, but here it's not a regulation, My Lords. Here it's not a regulation.

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You know, we are not so much today  
2 interpreting the provisions of the statute, as we are interpreting the expressions of Clause B of  
3 Article 39.

4

5 **H. DEVRAJAN:** I bow to what My Lord the Chief Justice has said. But I request My Lord the  
6 Chief Justice to kindly consider whether we could interpret this *dehors* the facts before us  
7 because this question has come to Your Lordships, on the basis of certain facts which were  
8 there.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But when we are interpreting Article 39(b), we  
11 don't interpret it in the context of that statute today before the Bench of nine judges.

12

13 **H. DEVRAJAN:** I would request Your Lordships to kindly consider...

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** There is a dichotomy between privately held  
16 property and publicly. For instance, will 39(b) cover only those lands which are what you call  
17 in Maharashtra *gairan* lands, or the grazing lands, or would it also cover in certain cases  
18 private lands?

19

20 **TUSHAR MEHTA:** Only one interjection which... so that Your Lordship's discussion can  
21 also be suitably. My Lords, resources psychologically because of MHADA and Rent Act, we are  
22 considering land and building. The resources would mean several mines, minerals, airwaves,  
23 et cetera, My Lords, several things.

24

25 **JUSTICE SUDHANSHU DHULIA:** Natural resources as well as man-made resources.

26

27 **TUSHAR MEHTA:** Yes, exactly. Not just land or building. That also may be one of the focus  
28 of examination.

29

30 **H. DEVRAJAN:** My Lord, I have no difficulty in the term, resources. I have difficulty in  
31 submitting to Your Lordships, that my building would be a 'material resource' because Your  
32 Lordships have time and again held, sorry...

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Your contention... Mr. Devrajan, look,  
35 MHADA Act contains a declaration, that it is intended to give effect to the directive principle  
36 contained in 39(b). Your contention, I mean, we are just trying to understand your argument.  
37 Your argument is that, look, you could not have made that declaration because

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**CHIEF JUSTICE D. Y. CHANDRACHUD:** ...39(b) cannot, by any standards, extend to private property. I think that's your.... That was your submission.

**H. DEVRAJAN:** No, My Lords. My submission is slightly wider than that. What Your Lordship says is one part of what I'm submitting. My second part of it is - Before you make such a declaration... Because Your Lordship and *Kesavananda* said, "This is justiciable."

**CHIEF JUSTICE D. Y. CHANDRACHUD:** 'Before you make a declaration...?'

**H. DEVRAJAN:** 'Before you make a declaration, you must come to the conclusion that it's a material resource.'

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Obviously...

**H. DEVRAJAN:** I'm on that. I am trying to make a submission...

**CHIEF JUSTICE D. Y. CHANDRACHUD:** According to this, this can't be a .... This can't be material resource at all.

**H. DEVRAJAN:** 'It can't be a material resources. Old dilapidated buildings cannot be material resource of the Community.' This is my submission.

**JUSTICE B. V. NAGARATHNA:** You are questioning the declaration itself.

**H. DEVRAJAN:** In a way, My Lady. In a way, I'm trying to interpret 39(b) to say that - "Before 39(b) can apply and the subsequent takings can follow..." Yes, what I interpret it, My Ladyship said, I need to go through the Act to interpret the rest of 39(b), but I'm not going there.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** But why can't be interpreted like this that any building... we are not dealing with a building. Buildings which are in the occupation... Old dilapidated buildings in say, like the Island city, which are in the occupation of a large mass of occupiers and tenants - they constitute as part of the material resources as a community, because ultimately it's a source of habitation and abode for such a large group of citizens.

1 **H. DEVRAJAN:** My Lord, the Chief Justice, I bow to what Your Lordship said, but My Lords  
2 have time and again said - "Make the distinction between a resource per se and material  
3 resources." This is where I would try to convince, Your Lordships that, yes, this is a resource.  
4 But is it a material resource...

5

6 **JUSTICE HRISHIKESH ROY:** Just one... to add to one, which the Chief Justice, has asked  
7 you - The material resources of the Community, when you look at that expression, are we not  
8 also looking at the community of inhabitants in a dilapidated building?

9

10 **H. DEVRAJAN:** Please, My Lord.

11

12 **JUSTICE HRISHIKESH ROY:** Because if you look at their needs, a building is crumbling  
13 down. The building is no safer. So, Community who are occupying that building, it is a material  
14 resource and a vital material resource for them.

15

16 **H. DEVRAJAN:** Again, My Lord, I could not make my point clear. That it is a resource...that  
17 it is a resource, the Petitioners don't dispute. The question is - "Is it a material resource?"  
18 Because Your Lordships have said - "For a resource to be a material resource, it should provide  
19 goods and services for the Community, which is my building doing so?"

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It provides a service. What is more  
22 fundamental than the right to a housing? It provides a place of abode for such a large segment  
23 of the Community. Take, a building which has 70 occupiers or 40 occupiers. It's a Community  
24 as Brother Hrishikesh Roy says, that it's a community of occupiers.

25

26 **JUSTICE HRISHIKESH ROY:** The Community will have to [UNCLEAR] for this  
27 Community.

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Absolutely.

30

31 **H. DEVRAJAN:** Please, My Lords.

32

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Devrajan, have you got your... have you  
35 made some written submissions?

36



1 **H. DEVRAJAN:** I have made a note, My Lords. But that note, I have not given to Your  
2 Lordships because quite a bit of it, Your Lordships have already shot down. So, I don't want to  
3 give it, because those points I can't raise now. Your Lordships have already told us that we  
4 can't go into that. So, I don't want to give that to Your Lordships.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, what is your formulation?

7

8 **H. DEVRAJAN:** My formulations are like this, My Lord.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Your submissions on Article 39(b)...

11

12 **H. DEVRAJAN:** Yes. I would start My Lords, by saying, if Your Lordships permit me, I would  
13 like to read certain passages from Krishna Iyer's judgment first.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Justice Krishna Iyer's judgment in that in the  
16 *Ranganatha Reddy* case?

17

18 **H. DEVRAJAN:** In the *Ranganatha Reddy* case. Because that should give us a... that  
19 should give us a background...

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Where is *Ranganatha Reddy*? Where is  
22 this?

23

24 **SAMEER PAREKH:** It's Volume number 5. Page 1727 PDF.

25

26 **H. DEVRAJAN:** As my learned friend rightly said, let me just put the broad proposition  
27 before Your Lordships, before I take Your Lordships through *Ranganatha Reddy*.

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yeah.

30

31 **H. DEVRAJAN:** My Lords, the way that Part 4 has been drafted or prepared, Part 4 is in the  
32 nature of instructions to be given to the State. In that context, we'd have to read 39(b) also. I  
33 do not want to read 39(b) *dehors* the context. First part. The second part is My Lords, without  
34 taking *tuto*, when I read 39(b) also, I can't interpolate or leave off certain parts of 39(b). That's  
35 the interpretation. When I come to interpreting 39(b), my proposition is, I read 39(b) as it is,  
36 without adding anything into it, or without removing anything from it, because this is  
37 something which is going to affect the citizen's right to a non-justiciable provision. So,

1 therefore, these two concepts My Lords, kindly consider as being the basis of my further  
2 submissions, on this point. But before I take Your Lordships there, I thought that if I could  
3 highlight to Your Lordships, the background in which Justice Krishna Iyer made the statement  
4 and what was the thought process of My Lord Justice Krishna Iyer when he made this  
5 statement, it might help me to explain to Your Lordships a little better what I'm trying to  
6 project. So, My Lords may kindly go down to, before I take Your Lordships to Justice Krishna  
7 Iyer's judgment, I won't take you long, because that's already been cited... some passages have  
8 already been cited from the majority judgment. Justice Untwalia's judgment has already been  
9 placed. You go to Justice Krishna Iyer, that passage which I told you, don't waste... I'm sorry,  
10 My Lords, I'm not very conversant with this. Hard copies, I would have easily managed. The  
11 point I'm trying to say My Lords, Justice...

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Justice Krishna's judgment?

14

15 **H. DEVRAJAN:** My Lords may please see para 81, of Justice Krishna Iyer...

16

17 **SAMEER PAREKH:** Starts at 40.

18

19 **H. DEVRAJAN:** Yeah. Okay.

20

21 **JUSTICE J. B. PARDIWALA:** You can give us the page number.

22

23 **H. DEVRAJAN:** Yeah. My Lord, may please. Justice Krishna Iyer's judgment is at page 1750,  
24 My Lord, of the...

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 1750.

27

28 **H. DEVRAJAN:** 1750. Volume V. The relevant portion of *Ranganatha Reddy*, My Lords.

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's para 81 at page 17...

31

32 **H. DEVRAJAN:** 1750, para 40. Your Lordship may permit me to read from para 40. I know  
33 it's a little longer, but I'll try to cut short and put whatever I think would be required by us.

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35 **JUSTICE HRISHIKESH ROY:** Better read para 40 first.

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37 **H. DEVRAJAN:** Yes, please My Lords.

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**JUSTICE B. V. NAGARATHNA:** Before that the preface.

**H. DEVRAJAN:** Yes, My Lords. "We go wholly with our learned Brother Untwalia. Then why a separate afterword?" He's asked this question. Because, to put it simplistically... Sorry, My Lords.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

**H. DEVRAJAN:** Please, My Lords. Because, to put it simplistically, a legislation for the Nationalization of Contract Carriages by the Karnataka State, where provision has been made for fair compensation, under present circumstances, has still been struck down by High Court on the surprising grounds of absence of public purpose, illusions of compensation, State takeover being beyond the ambit of Article 39(b) and the like, and to express ourselves emphatically in reversal, on the obvious, yet basic, issue we item wise below, which is necessary to obviate constitutional derangement again. The public sector in our Constitution system, is so strategic a tool in the national plan, for transformation from stark poverty to social justice. My Lords, may permit me to pause here for a moment. The background which, My Lords he seems to have, is nationalization. His whole focus was, when I nationalize, I can take private property and nationalize it. That seems to be the focus. It is in this context, that phrase has been used there. This is my humble submission, My Lords, I can't leave out what Justice Krishna has said, *dehors* what was in his mind. So, My Lords may permit me to go further. My Lords may please see para 41. If the State to subserve the objects of governmental or other like agencies compulsorily takes movable property or realty of private citizens, the like of which are readily available in the open market, does the law authorizing such violating limitation of public purpose imposed by Article 31(2) of the Constitution. Today My Lords, I can't go further on because, I don't have Article 31(2) on my statute today. But yet, the underlying principle seems to be 'nationalization' as I pointed out earlier. Throughout, even in this paragraph, My Lord, the Lordship is concerned with 'nationalization'. It is in that context again I re-emphasize, My Lord. It is in that context that, that phrase finds place in Justice Krishna Iyer's judgment. Not that 39(b), not that in 39(b), 'private property' would be included. No. He says "you take private property for nationalization." There, in that context it says, distribution of such property would be for the common good because I'm giving it to the public at large. I'm taking from one person, giving it to the public at large. It is not a case where a private property would be taken and given to another private person. That is not what he had in mind. My Lord, Justice Krishna Iyer had nationalization only in mind when he made this submission. This is my humble submission for Your Lordship's kind consideration. I'll take

1 My Lordships still further, where My Lord deals with distribution also. My Lord says  
2 "Distribute it." There also, My Lord says that is the basis of 39(b), distribution for the common  
3 good again means nationalize and give it to the people. Don't keep it with you. Give it to the  
4 people. Throughout, give it to the people. That is his whole focus. With this background in  
5 mind, My Lords, I may kindly be permitted to now read the provisions of Article 39. But before  
6 I go to 39, a few other articles which might throw 'some light on the interpretational process.

7

8 **JUSTICE HRISHIKESH ROY:** Mr. Devrajan?

9

10 **H. DEVRAJAN:** Yes, Sir.

11

12 **JUSTICE HRISHIKESH ROY:** Perhaps you will also take us on the objective of the Act,  
13 because, after all, we'll have to consider, together with what you are trying to canvass before  
14 us, that it is only in the context of nationalization, because the Act obviously doesn't think of  
15 nationalization, but it talks about giving it back to community or let us say, co-operative  
16 society. So therefore, you'll have to take us through the objective of the Act as well.

17

18 **H. DEVRAJAN:** This Nationalization Act or Power Act?

19

20 **JUSTICE HRISHIKESH ROY:** No. The 'MHADA' Act.

21

22 **H. DEVRAJAN:** Please. My Lords. I was avoiding it My Lords, because in- between, in-  
23 between, it came from Your Lordships, that Your Lordships would prefer to deal with this or  
24 not?

25

26 **JUSTICE HRISHIKESH ROY:** Don't get derailed. Don't get derailed.

27

28 **H. DEVRAJAN:** Sorry.

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We'll have to understand the context of the  
31 Act.

32

33 **H. DEVRAJAN:** Please, My Lords. I will. With Your Lordships' kind permission, I'll take  
34 Your Lordships through the provisions of the statute also, but what is its purpose, I may tell  
35 Your Lordships in brief. The purpose of Chapter VIII-A of the Act is preservation of  
36 "[INAUDIBLE]". I'll set out those provisions because I've got a note which I'll hand over. Each  
37 section I have analysed. I'll put it at [INAUDIBLE]. Before that My Lords may kindly permit

1 me to just clear this small aspect which was there in my mind, which I thought I would share  
2 with Your Lordships, namely about material resources. I don't. want to go into material  
3 resources *per se*, I already made a submission to Your Lordships, that I have to read 39 in the  
4 context in which it was placed in the statute book. And the context is what? The context is, it's  
5 a directive principle to the State. To do what? 37 very clearly says, it shall be the duty of the  
6 State to apply these principles in making these laws. And now, in that context, when I come to  
7 39(b), My Lords have 39(b), for a moment, please. Thank you. Thank you. Would Your  
8 Lordships have 39(b) for a moment, please?

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

11

12 **H. DEVRAJAN:** My Lords, my submission here is, if the term 'material resources of the  
13 community' is to include private property. If it is to include private property, then some words  
14 have to be added, or some words have to be deleted, namely, here My Lords, the ownership  
15 and control of private material resources of the community are so distributed. 'Private' has to  
16 be added there or what they should remove is, material resources are so distributed, "of the  
17 community" has to be removed. If it is removed, then this material resource will apply to all  
18 resources, private and public. We are asking ourselves to read this Article, which has got  
19 drastic consequences of shutting out my Constitutional rights under Articles 14 and 19 in a  
20 manner which is not present in that Article.

21

22 **JUSTICE RAJESH BINDAL:** The term 'community', it will not be included?

23

24 **H. DEVRAJAN:** 'Community' is not defined. But I take it that 'community means the entire...  
25 whoever is, what should I say... affected by it... or a particular, like we say, the Tamilian  
26 committee, the Andhra community...

27

28 **JUSTICE RAJESH BINDAL:** Does it not include private also. Community means it's a  
29 generic term basically.

30

31 **H. DEVRAJAN:** Correct. But when I talk of the resources, I'm now talking of the resources  
32 also. And here My Lords... Sorry, My Lord is saying something.

33

34 **JUSTICE RAJESH BINDAL:** Of the community.

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36 **JUSTICE B. V. NAGARATHNA:** Are you trying to say that resources of the community...  
37 material resources of the community does not encompass private resources?

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**H. DEVRAJAN:** This is what I am trying to submit My Lady. For the reason that, if it were so, it would read private material resources of the community also. Because, as Your Lordship said, every individual is a member of the community. There's no doubt about it.

**JUSTICE RAJESH BINDAL:** It talks about resources of the community only?

**H. DEVRAJAN:** This point I'm trying to say, trying to canvass for Your Lordships' kind consideration is, if it was intended to cover private resources, this 39(b) could have specified it, rather than leave it for an interpretation to somebody who could misinterpret it or interpret it in a different way. It's just the addition of a single word, or deletion of certain words. Here, My Lords, I will take Your Lordships through one judgment, which I could lay my hands on, where the term, 'material resources' has been considered. There, Their Lordships have said... where is that...?

**COUNSEL:** ...relevant portion 2314...

**H. DEVRAJAN:** My Lords, in that judgment compilation... What was that, Volume 5? Volume 5. If My Lords could have page 2314 for a moment My Lords? If I may trouble My Lordships to have a look at that judgment, please.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

**H. DEVRAJAN:** My Lords, in *Sanjeev Coke*, though it's against me on other aspects, My Lords, one very important factor was considered.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** But in Justice Krishna Iyer's judgment, just read para 80 and 81...

**H. DEVRAJAN:** Please.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Justice Krishna links it with the whole concept of redistributions.

**H. DEVRAJAN:** Correct.

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And says the focus of Article 39(b) is on  
2 redistribution. Then, whether that material resource is public or private should not make any  
3 difference. That's the logic of his judgment.

4

5 **H. DEVRAJAN:** Essentially, My Lord, that is nationalization concept. If I read this again in  
6 the...

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Para 80 and 81 you can read.

9

10 **COUNSEL:** 1771.

11

12 **H. DEVRAJAN:** My Lords, 1771.

13

14 **JUSTICE HRISHIKESH ROY:** 17...what?

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 1770, 1771.

17

18 **H. DEVRAJAN:** Yeah. Please My Lords. My Lords, reading para 81, My Lords. My Lords,  
19 could I read para 81, please?

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Sorry?

22

23 **H. DEVRAJAN:** Could I read para 81 onwards, My Lords?

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You can actually read para 80 as well.

26

27 **H. DEVRAJAN:** Please, My Lords. "This takes us to the non-negotiable minimum of nexus  
28 between the purpose of the acquisition and Article 39(b). Article 39(c) was feebly mentioned  
29 but Article 39(b) was forcefully pressed by the appellant. Better read Article 39(b) before  
30 discussing its full import. Certain principles of policy to be followed by the State. The State  
31 shall, in particular, direct its policy towards securing that the ownership and control of the  
32 material resources of the community are so distributed as best to subserve the common good."  
33 The key word is 'distribute' and the genius of the Article, if we, may say so, cannot but be given  
34 fully play as it fulfils the basic purpose of restructuring the economic order. Each word in this  
35 Article has a strategic role and the whole Article is a social mission. It embraces the entire  
36 material resources of the community. Its task is to distribute such resources. Its goal is so to  
37 undertake distribution as best to subserve the common good. It reorganizes, by such

1 distribution, the ownership and control. 'Resources' is a sweeping expression and covers not  
2 only cash resources but even ability to borrow credit resources. It's meaning given in Black's  
3 so and so, My Lords, go through it. Now, just take Your Lordships, next. And materials of the  
4 community, in the context of reordering the national economy, embraces all the national  
5 wealth. My Lordships, Justice Krishna Iyer would like to even take away my salary or my fees  
6 and distribute. I'm not saying anything about anybody else, but at least for myself, I can say.  
7 If what Justice Krishna Iyer raised here is implemented, whatever fees I earned also can be  
8 taken away and distributed.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** They do that, in tax.

11

12 **H. DEVRAJAN:** They did it in the past, My Lords.

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 97% was a tax at one time.

15

16 **H. DEVRAJAN:** They did it in the past, My Lords. They say you earn Rs. 3000, if you earn  
17 Rs. 3000, if your DA goes up by Rs. 1800, we'll reduce your salary and keep it 3000. They did  
18 it in the past, My Lords. So, all the time trying to suggest My Lords, again, reading this para  
19 also, it takes me back to the same principle. The same principle he wants to usher in a  
20 socialistic pattern of society.

21

22 **JUSTICE B. V. NAGARATHNA:** One of the aims of that is, with regard to concentration of  
23 wealth in the hands of a few. So in that context, nationalization was one of the vehicles, to see  
24 that such a thing did not happen in society.

25

26 **H. DEVRAJAN:** Correct. My Lady...

27

28 **JUSTICE B. V. NAGARATHNA:** Concentration of wealth.

29

30 **H. DEVRAJAN:** My Lady, taking what fell from My Ladyship's, a little further, would taking  
31 away from one person, fall within that category? Would taking away a private person's  
32 property fall within that category? It is a question I am asking myself, My Lord. I am not taking  
33 My Lordships through para 82, because he categorically deals with nationalization and says it  
34 has a nexus with distribution. I've no issue. I can't... I'm not going into that. Now, since My  
35 Lords would like me to take Your Lordships through the Act in question, where protection of  
36 31C is sought by the State, and which we feel they cannot have, I will broadly tell Your  
37 Lordships, what that chapter is. Broadly, I'll tell Your Lordships.



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**CHIEF JUSTICE D. Y. CHANDRACHUD:** Just read para 81 also?

**H. DEVRAJAN:** Sorry, para 81. Please, My Lords. My Lord has got it? It's at page 1771 of the compilation, My Lords. 'Resources is a sweeping expression and covers not only cash resources, but even ability to borrow, and material resources of community, in the context of reordering the national economy, embraces all the national wealth, not merely natural resources, all the private and public resources of meeting material needs, not merely public possessions. Everything of a 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.'

**JUSTICE B. V. NAGARATHNA:** Any land in excess of the ceiling that was taken away, it vested with the State for the purpose of redistribution.

**H. DEVRAJAN:** Yes.

**JUSTICE B. V. NAGARATHNA:** That is private land.

**H. DEVRAJAN:** True. My Lady, but taken away under what provision of the Act? Under what provisions? And in respect of what?

**JUSTICE B. V. NAGARATHNA:** Land Reforms Act.

**H. DEVRAJAN:** Correct. Land Reforms Act, My Lady, we have specific provision Article 31A, which deals with estates. There they don't rely on 39(b) at all. They don't rely on 39(b) at all. What falls from Your Ladyship, yes, I did think about it, but then they don't. They don't say, I pass an Act and seek protection, elsewhere. 39(a) itself says, if it's an estate, yes, I can take it away. Because, the whole concept of 39(a) is zamindar system... to abolish zamindar system. Large tracts of land, they wanted to give it to the tiller. Land to the tiller was a concept those days. Today they are saying land to the tenant. Even if the, even if the Landlord has got a single building, even if he's surviving with a meagre rent, you take it away from him. Today, My Lady, let me... what Justice Krishna Iyer has said about material resources, a subsequent bench has clarified what material resources. The Constitution bench in *Sanjeev Coke*, that judgment is against me in so far as 31C is concerned My Lord.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** *Sanjeev Coke* now?

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**H. DEVRAJAN:** Yes, *Sanjeev Coke Manufacturing Company, (1983) 1 SCC 147*. My Lord, it's at page 2294 of this Case Law compilation. It starts from there. The relevant portion is para 19 at 2314 My Lords. 23... Sorry. My Lord, the judgement...

**JUSTICE SUDHANSHU DHULIA:** 2313 I think.

**H. DEVRAJAN:** Sorry, My Lord?

**JUSTICE SUDHANSHU DHULIA:** 19 is 2313.

**H. DEVRAJAN:** My Lord, its para 19, but the relevant portion is on the next page. 2313 is where it starts. 2314 is the relevant portion. My Lords may permit me to read it. The expression material.... I'm sorry.

**JUSTICE SUDHANSHU DHULIA:** Where you are reading?

**H. DEVRAJAN:** My Lords, after the starting of the page, The Lordships are dealing with *State of Karnataka vs Ranganatha Reddy*, on the top, and about say eight lines below, My Lord. It is eight lines below.

**JUSTICE HRISHIKESH ROY:** Is it part of paragraph 19?

**H. DEVRAJAN:** Yes, My Lord. Paragraph 19, part of paragraph 19. Unfortunately, I don't see the placitums here, which were there in the past.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Read from the third line. Read from the third line. Shri Sen urged....

**H. DEVRAJAN:** Shri Sen urged, that is the word 'distribute' was given its proper emphasis, it would inevitably follow that material resources must belong to the community as a whole. That is to say, to the State or the public before they could be distributed as best to subserve the common good. Since these material resources which belong to the State only could be distributed by the State, Shri Sen argued that material resources had first to be acquired by the State before they could be distributed. A law providing for acquisition was not a law for distribution. Now, this is important My Lords where they say, we are unable to appreciate the appreciate the submission of Shri Sen. The expression material resources of the community.

1 Now they have defined this My Lords. Of the community, means all things which are capable  
2 of producing wealth for the community. Not that all things in which the community has an  
3 interest. No. They say that must produce wealth for the community. Then it will be a material  
4 resource of the community. Here, so this is the test, My Lords. Is this a material resource or  
5 not? The test is, would that resource produce wealth for the community? Not for myself. This  
6 is the test that Your Lordships have laid down. And then they say there's no warrant for  
7 interpreting the expressions, in so near a fashion as suggested by Shri Sen. I'm not going  
8 further My Lords. For my limited purpose My Lords, material resource means it must produce  
9 wealth for the community. Like the buses did. In a nationalized program those buses did.  
10 Whether, they actually earned or not is a different matter. But that was the intention.

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 39(b), refers to material resources of the  
13 community. It does not refer only to resources owned by the community as a whole, but it also  
14 refers to resources owned by individual members of the community. That's what they say at  
15 page 2315.

16

17 **H. DEVRAJAN:** Please, My Lords. Now, this is the point that I am trying to say.

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** "Resources of the community do not mean  
20 public resources only, but include private resources as well."

21

22 **H. DEVRAJAN:** The point that I'm just emphasizing a little more, yes, private resources, but  
23 for what purpose? Producing goods and services for the community. If I have a piece of land  
24 which is just lying that, you take it and produce goods and services for the community. There's  
25 no difficulty in 39(b) applying there. The crucial word, according to me, is that, this is  
26 emphasized by the interpretation of 39(b). Since it would be necessary for us to see what this  
27 Chapter VIII-A is about, if My Lords may permit me to just place it, My Lords. Give me the  
28 Act. To broadly indicate... I'm sorry My Lords. I had circulated one note which reads, 'history  
29 regarding repairs'. Could I take Your Lordships through that?

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes, certainly. Where is that?

32

33 **H. DEVRAJAN:** My instructions are, it was mailed to Your Lordships this morning.

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes. Just upload it for us. Actually, we should  
36 go to the Act. More than the note, we'll look at your note, but let's look at the provisions of the  
37 Act.

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**H. DEVRAJAN:** Please, My Lords.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** ...of Chapter VIII-A. And, because they will give us a flavour of whether these provisions have a nexus of the distribution of the resources of the community for the common good.

**H. DEVRAJAN:** Please, My Lords, I would do that. My Lords, the reason why I suggested this is, in this note, if Your Lordships may kindly go to... a little down, I have set out the salient provisions of the Act, My Lords... at 12, My Lords. At Item 12.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Devrajan is the only Counsel now, who has to argue on this side?

**H. DEVRAJAN:** My Lord, small request. My learned friend, might add a few things to what I have said. Few things he might like to add. And my learned friend, Zal also might like to add a few things. Just a few things, My Lord.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** So, Mr. Devrajan, you can wrap up by 3:30, about 50 minutes.

**H. DEVRAJAN:** I'll try to wrap up as fast as possible, My Lords.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** By 04:00 we'll complete this side. Tomorrow we'll start with the other side.

**H. DEVRAJAN:** My Lords may kindly, give me a leeway of about 10-15 minutes, given my speed is not that good.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** No problem. But by 03:00, that's why instead of 03:15 I...

**H. DEVRAJAN:** I would try, My Lord. I will definitely try to obey Your Lordships directions.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** If you are done by 04:00, then, we'll call upon the other side tomorrow.

1 **H. DEVRAJAN:** Okay. My Lords, if Your Lordships, just to shorten the things, in this note,  
2 serial number 12. In this note, serial number 12, I've set out a salient factors of Chapter VIII-  
3 A. But, I need to take Your Lordships through the various clauses also, which I would do  
4 subsequently. But now, let me take Your Lordship to Chapter VIII-A, because this would  
5 directly answer the question that has been posed to me. My case is that Chapter VIII-A, in its  
6 pith and substance, is for preservation of housing stock. These old buildings, how do I preserve  
7 them?

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Not just preserve them, but actually  
10 reconstruct them as well.

11

12 **H. DEVRAJAN:** That's why I will take Your Lordships through the Section 103B. It will  
13 become very clear, My Lords. They use the word 'better preservation' or 'reconstruction'. The  
14 emphasis is first on 'better preservation.' My Lords may with permit me to just take Your  
15 Lordships briefly through this note. Then, I'll take Your Lordships through the Section.

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Which is that chapter?

18

19 **H. DEVRAJAN:** Chapter VIII-A.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What is the page, PDF page?

22

23 **S. PRASANNA:** Chapter VIII is 4033 of the main statute...

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 4033?

26

27 **H. DEVRAJAN:** My Lord, we put the gazetted copy today, My Lords.

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We got Chapter VII-A now. At 4033, we go to  
30 Chapter VIII-A.

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** VII-A is not in question here, right?

33

34 **H. DEVRAJAN:** Actually, My Lords, there was no VII-A at all.

35

36 **SAMEER PAREKH:** That's a typo error.

37

1 **H. DEVRAJAN:** That was a typo My Lords. Absolute typo, My Lord.

2

3 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, 103A is in the Chapter VIII?

4

5 **H. DEVRAJAN:** VIII-A, My Lords. My Lords may kindly see.

6

7 **TUSHAR MEHTA:** Today's concentration is on VIII-A. Chapter VIII-A is the...

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What's the PDF page? We're just trying to...

10

11 **SAMEER PAREKH:** 4033 is VIII-A.

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So 103A is in Chapter VIII-A?

14

15 **H. DEVRAJAN:** We'll start from there, My Lord.

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Because the title says "Chapter VII-A." That's  
18 why I asked it. It's a typographical error.

19

20 **H. DEVRAJAN:** Typographical. My Lord, today we uploaded a gazetted copy of the Act, My  
21 Lords. In that, Your Lordships will find it page 237, Chapter VIII-A.

22

23 **RAKESH DWIVEDI:** I'm told it's a typo error. My learned friend tells me it is...

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It is a typo error.

26

27 **TUSHAR MEHTA:** Yes. It is VIII-A.

28

29 **RAKESH DWIVEDI:** VIII-A, actually.

30

31 **JUSTICE J. B. PARDIWALA:** 4033, in which Volume it is?

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Volume IV.

34

35 **H. DEVRAJAN:** Volume IV. My Lords. Could I trouble you to look at the gazetted copy  
36 because there might be certain...

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** No no, it will be the same. That... only change  
2 is that Chapter VII-A.

3

4 **H. DEVRAJAN:** As I said, I've not cross-verified, so I requested you..

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You read the gazetted copy. If there's some  
7 change, we will know.

8

9 **H. DEVRAJAN:** All right. My Lords, please see Section 103A first. Section 103A... Section  
10 103A states, that the Chapter will apply to all buildings constructed prior to 1st September  
11 1940. The proviso to that says, two things. One, it says that- the building should be  
12 predominantly residential. That is, more than 50% of the occupants must use it for residential  
13 purposes. That's the first part, My Lord. The second point is, it should be a building belonging  
14 to Category A. That is to say, other buildings are not part of Chapter VIII-A.

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Defined in Section 84?

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Chapter VIII-A is defined in, Chapter VIII,  
19 under the heading, for...

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Category A is in Section 84 at page 4023?

22

23 **H. DEVRAJAN:** Correct. Of Chapter VIII. Briefly put, My Lords, the categorization was done  
24 like this. Buildings constructed prior to 1st September, 1940 are Category A, buildings  
25 constructed from 1st September '80 till 31st December 1950 are Category B and building's  
26 constructed from 1st January 1951, till the enactment of the Cess Act, there used to be a Cess  
27 Act before My Lords, called the Bombay Buildings Repair and Reconstruction Board Act 1968,  
28 till then, My Lord, all those buildings were categorized as Category C, and cess was being levied  
29 depending upon the category of the building. That's, in short, My Lords. Here My Lords may  
30 please see the first proviso to Section 103A. Provided that nothing in this Chapter shall apply  
31 to any cessed building belonging to Category A, if on the commencement of the MHADA,  
32 Second Amendment Act, 1986, out of the total number of occupants of such building, 50% or  
33 more occupiers are using the tenements or premises in that position for 'commercial' or 'non-  
34 residential'. In other words, My Lord, even though cess could be levied on a Category A  
35 building, these buildings, where it's predominantly commercial, would not fall within the  
36 provisions of Chapter VIII-A. Then we come to the explanation, My Lords. Today for our  
37 present purpose, My Lord, explanation is not that relevant. What is relevant is 103B. 103B

1 says, notwithstanding anything contained in Chapter VIII or any other law, a co-operative  
2 society formed or proposed to be formed, by, under the provisions of Co-operative Societies  
3 Act, but not less than 70%, I would stop here for a... why I'm saying this 70%, My Lords, is  
4 when I deal with 39(b) and the policy, when I deal with a policy in 39(b), the policy of the State  
5 and 39(b), what is the co-relation between this Act and the policy? If there is a policy, it should  
6 apply to everyone. Now, this Act is doing two things. It's not dealing with all pre-1940  
7 buildings. That means to say, it's not dealing with all dilapidated or old buildings, which they  
8 consider to be dilapidated. This is only dealing with certain old buildings, whatever being their  
9 condition. That's the first part. The second point, as you said, is the trigger is 70% people  
10 wanting it. And what did they want? And why do they want it? They want it for one purpose.  
11 They say... My Lords may please see. They make an application, they make a written  
12 application requesting the Board to move the State Government to acquire the land. For what  
13 purpose? This is important, My Lords. So, go just a few so and so. Four lines below that Section  
14 My Lords. In the interest of its better preservation, My Lords, have got that? In its better  
15 preservation or reconstruction, of a new building in lieu of the old one, and intimate their  
16 willingness to pay the amount of such acquisition as may be determined under the provisions  
17 of Chapter, and to carry out the necessary structural or other repairs, or wherever necessary.  
18 My Lords, may please see, the reconstruction is 'wherever necessary' to reconstruct a new  
19 building. I ask myself this question, is this not a provision which deals with preservation of  
20 housing stock. If it is a preservation housing stock, how are they referring it to 39(b)? Because,  
21 one of the tests that Your Lordships have time and again said, we will see whether there's a  
22 nexus between 39(b) and the enactment. Here I ask myself this question.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It has a nexus with distribution. Because what  
25 happens is that instead in place of the ownership of the erstwhile owner, the property upon  
26 acquisition, vests in a co-operative society and that co-operative society represents the  
27 interests of all the occupiers. So, as opposed to the property being concentrated in the hand of  
28 the owner, as a result of this acquisition, title is transferred to a co-operative society, provided  
29 70% of the occupiers want to come together and form the society and express a willingness to  
30 pay the amount of the compensation for acquisition.

31

32 **H. DEVRAJAN:** If what Your Lordships said was the Act..

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The idea is for the better preservation of the  
35 building or if repairs are required, repairs, or where reconstruction is required, reconstruction.

36



1 **H. DEVRAJAN:** The small aspect which I'd request Your Lordships to consider is, is there a  
2 transfer of ownership at all? Is there a transfer of control at all? Section 103C will explain this.  
3 Section 103C will explain the concept of what am I giving a co-operative society? Am I  
4 transferring ownership to him? Am I giving control to him? 103C will explain.

5  
6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Now just see, before 103C, sub-section 2 of  
7 103, 103A, this is 103A no? B. On receipt of the application under sub-section (c), under sub-  
8 section 1, the Board shall, after due verification and scrutiny, approve the proposal, if it  
9 considers that it is in the interest of the better preservation of the building or to be necessary  
10 for reconstruction of a new building, and shall direct the Co-operative Society, whether  
11 registered or proposed, to deposit with the Board within a period specified by it on their behalf,  
12 30% of the approximate amount that would be required to be paid to the owner, if the land is  
13 acquired and give intimation that the... Security has to be put up front.

14  
15 **H. DEVRAJAN:** In short, that's the second part of our submission. In short, My Lord, this  
16 Act says, you pay the entire money of acquisition also, because 103B itself says so. You have to  
17 say that I will not only pay the cost of acquisition, but I'll also take care of the cost of repairs  
18 and reconstruction if any. If the entire money is to be paid by a private individual, and the  
19 State does not have to shell out a single paise from its coffer, would this be a concept of public  
20 purpose? Well, 39(b) has to be for public purpose, because every action of the State has to be  
21 in furtherance of public purpose. This is what Your Lordships have said time and again.

22  
23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The public purpose really, is the better  
24 preservation of dilapidated buildings.

25  
26 **H. DEVRAJAN:** Yes.

27  
28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The reconstruction where reconstruction is  
29 necessary, because reconstruction is in order to obviate a danger of collapse and a loss of lives.

30  
31 **COUNSEL:** Saving human lives.

32  
33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And though the State does not pay, the State  
34 carries out the entire acquisition. But, since it's in the interest of the Co-operative Society, the  
35 amount has to be deposited by the Co-operative Society with the Board.

36

1 **H. DEVRAJAN:** They have to pay the entire cost. They have to pay the entire cost. They have  
2 to pay the entire cost. And way back, My Lords, not today, in *Kasturi Lal's* case, long, long  
3 ago...

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** See Mr. Devrajan, we are not looking at the  
6 Constitutional validity of the statutory Provisions per se.

7

8 **H. DEVRAJAN:** No, we are not. We are looking at the...

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** ...Article 39. We're looking at the nexus.

11

12 **H. DEVRAJAN:** My Lord, I am also making submissions vis-a-vis 39(b), because to me 39(b)  
13 has to be for a public purpose. Please My Lords. It has to be for a public purpose, and it is in  
14 public interest that 39(b) has been inserted. Sans that 39(b) would have no sanctity, My Lords.  
15 A Directive Principle to a State, has to have a public interest and a public purpose, My Lords.  
16 39(b) can't be read *dehors* these things. This is my submission. My voice is a little loud, but I  
17 don't mean any disrespect to the Bench. I don't mean disrespect, My Lords.

18

19 **JUSTICE HRISHIKESH ROY:** Very frequent visitor to the Supreme Court.

20

21 **H. DEVRAJAN:** I was practicing here. I was practicing here till I reached a stage where I  
22 could not walk My Lords. Even today I'm standing with great difficulty.

23

24 **JUSTICE HRISHIKESH ROY:** We are sorry to hear that.

25

26 **H. DEVRAJAN:** I've got a hip-bone replaced, My Lords. I could not walk. I could not stand  
27 the winter. So, I had to migrate back to Bombay, from where I started my life.

28

29 **JUSTICE HRISHIKESH ROY:** But decibels here are astounding. That's what I was going  
30 to...

31

32 **H. DEVRAJAN:** I'm sorry, My Lords?

33

34 **JUSTICE HRISHIKESH ROY:** Decibels here are astounding, of some of your colleagues in  
35 the bar.

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37 **SAMEER PAREKH:** Specially on miscellaneous days, My Lord.

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**TUSHAR MEHTA:** Even if some lawyers are appearing virtually, and they are on a mute mode, we can hear them.

**H. DEVRAJAN:** Sir, I could say the same about you also. I've been hearing you frequently Sir. Sorry, no offence meant. If I may continue. So, this Act, we are not... again, I'm saying, I'm on the question of control. We are not challenging... checking the validity of this Act, only trying to explain what are its content. And we are going to see whether 39(b) can at all apply. We are not going into the validity of the Act, because I got other challenges to challenge this provision. I'm not on that. I am saying, concept of 'distribution of control', who has got the control? If I see 103C, the control is with the Board, not with the Society. If that Society is given, it has to use it after reconstruction or repair, for the same purpose for which it was using before. So, where is the distribution? Where did you transfer the control? Secondly, My Lords, if by chance one of the members sells, disposes it off, immediately My Lord, the transaction is void, and the Board will have a right to take back the property. Where is the transfer of ownership? These are the questions which are falling from the provisions of this Act, My Lords. So, when I test this Act, either on the basis that there should be a transfer of ownership or control, I don't find a transfer of ownership or control.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Why? Ownership can control this transfer to the co-operative society.

**H. DEVRAJAN:** My Lords, one of the incidents of transfer of ownership would be that I have the absolute right to the property. I don't have.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** I mean, to the co-operative society?

**H. DEVRAJAN:** I don't have a right My Lord, because they say, the moment I gift it, My Lords I'll read Section 103C, then Your Lordships would see, how drastic that provision is. If that occupant gifts it, that gift is void. The property can be resumed. If the Society uses this property other than what it was using before it was acquired, again they would resume. Where is the transfer ownership then? If at every stage, whatever I do, you are going to have it, you have the absolute control over it.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** After the land is transferred to the co-operative society.

1 **H. DEVRAJAN:** Even then, My Lord. That is what I'm trying.

2

3 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And sub-section 7 of 103B says, subject to the  
4 provisions of sub-section 6, the authority shall convey the land acquired under this Section to  
5 the co-operative society of the occupiers thereof...

6

7 **H. DEVRAJAN:** Exactly.

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** ...with its rights, title and interest therein, and  
10 execute without undue delay and necessary documents. Therefore, title is transferred to the  
11 co-operative society.

12

13 **H. DEVRAJAN:** Yes. There they say I will transfer the title. But now let me see what 103C  
14 says. Let's see what 103C says. The transfer of title is subject to the conditions contained in  
15 103C. 103C is the starting point. It says, after the land is transferred to a co-operative society...  
16 My Lords, please kindly allow me to place this a little more vociferously. He says after the land  
17 is transferred to the co-operative society, under sub-section 7 of Section 103B, which, My Lord,  
18 the Chief Justice just now mentioned, what happens, the society shall use the same for the  
19 purpose for which it was used before the acquisition. So, [UNCLEAR]?

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** No, not [UNCLEAR] usage. The idea is that if  
22 it was for...

23

24 **TUSHAR MEHTA:** My Lord, if I am the owner...commercial Your Lordship.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** ...converted into five-star hotel, the idea is to  
27 protect the occupier.

28

29 **H. DEVRAJAN:** No, see, no. They are not even protecting occupier. That's the unfortunate  
30 part of it. If they protect the occupier, my decibel levels would have been very, very low. They're  
31 not. They are saying that, go further, My Lord, see. 'And if... that no member or tenant of the  
32 co-operative society shall transfer his interest in any tenement by sale, gifts, exchange, leave  
33 or license, assignment'. What is this? I don't have any of the incidents of ownership. I can't  
34 even gift it and yet there is a transfer of ownership to me. If this is the law, My Lord, then I  
35 have to bow my head. I have nothing else to say on this. *Ho gaya*. We'll take him to that.

36

37 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We all wish you a very happy birthday.

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**TUSHAR MEHTA:** I said that the Court is very kind. If you want to sit and argue...

**H. DEVRAJAN:** The learned Solicitor was suggesting to me that I should sit...

**CHIEF JUSTICE D. Y. CHANDRACHUD:** At any point of time, if you want to sit and argue, please feel free.

**TUSHAR MEHTA:** That's what. The Court is always kind.

**H. DEVRAJAN:** My Lord, it will make me feel sicker than I really am. I walk with a walking stick. Today, I said, no, I am not going to carry the walking stick. Let me walk without a stick.

**RAKESH DWIVEDI:** You should not do that.

**H. DEVRAJAN:** And that's how. Because I have three people to hold my hand. Why should I need a walking stick for that? No, sorry. Jokes apart, My Lord. Come back again. My Lords, I'll come back again. So, My Lords, 103C. 103C sub-Section 2, is a little... It says save as otherwise expressively provided in this Chapter and notwithstanding anything contained in any law for the time being in force. You cannot do this. But see the embargo. The embargo in 103C(2) and then sub-3. If a co-operative society contravenes the provisions of sub-section(1). Out. It will go back.

**JUSTICE HRISHIKESH ROY:** But Mr. Devrajan, see 103 itself says that it will be used for the same purpose for which it was used prior to this particular step. So, therefore, so far as the occupants are concerned, their occupancy right in that building whichever way it comes up thereafter, is protected. So, it is to protect the right of residents.

**H. DEVRAJAN:** Could I make a small submission here, My Lords? These are all people are protected by the Rent Control Legislation. Nobody can touch them or send them out except by filing a suit in the rent court. All, most of them have been living and as my learned, as my learned friend pointed out, there are people who are claiming tenancy rights in the state, in the City of Bombay, and are practicing here. I don't want to take anybody's name. They are paying peanuts for the huge premises that they are staying. So, therefore, my only submission here is, their occupancy rights are sufficiently protected by the provisions of the Rent Control Act.

1 **JUSTICE HRISHIKESH ROY:** [INAUDIBLE], You know eviction, ejection, etc.

2

3 **H. DEVRAJAN:** To just swiftly respond to what Your Lordship says. My Lord, I'm saying it  
4 extempore. Sorry. With Your Lordship's kind permission, can I take a sip of water, please?  
5 Obligated, My Lords.

6

7 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What is the next provision you want us to see,  
8 Mr. Devrajan?

9

10 **H. DEVRAJAN:** My Lord, I just want to point out one more thing. For a long time it was in  
11 my mind, that, what's wrong, if the landlord is unable to maintain the premises, then what's  
12 wrong in getting the tenants to do it? To this, My Lords, I found two problems to that question.  
13 One is, there was a provision under the old Rent Act, and probably even in this Act, that if the  
14 landlord is not... because earlier... Your Lordships would be aware... earlier the landlord could  
15 increase the rent after carrying out repairs. Even if he doesn't have money, he could borrow  
16 money and carry out repairs, and the tenant would repay that amount in pieces. Then they  
17 came out with an Amendment, saying that if the landlord is unable to do it, you carry out the  
18 repairs, and then you deduct it from the rent that you have to pay to him. All this not having  
19 worked, in 1968, they come out with an Act called, 'the Repairs Board Act'. 'The Bombay  
20 Repairs and Reconstruction Board Act, 1968, where they said, this Board will carry out the  
21 structural repairs, you pay a cess. A tax is levied for carrying out those repairs. Even that they  
22 did not do. And today, in '86, they come out and say, these buildings were not being looked  
23 after by you. They forget that they have taken the responsibility of carrying out the repair. They  
24 forget that they are taking money from the people for carrying out the repairs. If they have not  
25 carried out the repairs, today, they say in this Act, if Your Lordships would see, this Act... they  
26 seek to now... we might have committed a default. We might have closed your rents at 1940  
27 levels. We may not have made it possible for you to carry out repairs, yet, the buildings have  
28 gone bad, so we will take the property from you. Now, whether at all 39(b) envisages such a  
29 situation, is a question, which I request Your Lordship to kindly consider. I'm a tenant myself,  
30 My Lords, but still I'm fighting for a landlord's just demand. That please don't deprive me of  
31 the property that my forefathers have brought into. And My Lordships would be aware that  
32 when the Cess Act came, there was a challenge done, and a report was recorded as to what is  
33 the status. This particular thing is for seven, only seven and only seven wards in the Bombay  
34 sector. They're all old buildings, no doubt. But what is the remedy? Is it taking it away? Why  
35 not create conditions to make them carry on the repairs? And if they don't, then you take it  
36 away. This is all I say. You do whatever you want, but please make it possible for them. You  
37 don't say, that "I will take it, I will carry out the repairs, you pay me the cess." And at the end

1 of the day, you say that "I could not do it, so you give me the building to the tenants." So,  
 2 tenants are given opportunity. They don't do it. Both takes that they will carry out repairs.  
 3 They charge a cess from the tenant, as well as from me. And at the end of the day, the building  
 4 is in a bad condition. Who is responsible for that, I asked myself this question. Rents... it is  
 5 now recorded My Lords, that cost of building materials have gone up substantially since 1940,  
 6 astronomically. My rent is fixed. If anything in the world has remained stagnant and steady, it  
 7 is the rent of these landlords. This is the fact. That's an argument for the Rent Act, My Lords,  
 8 I'm not on that. But I am on, whether at all 39(b) envisaged this? If 39(b) is supposed to do  
 9 equitable distribution, where is the equity in this, My Lord? This is the question I'm asking  
 10 myself. My Lords, I would stretch, my time is coming to an end. I have lost more to say. But,  
 11 I'll request my learned friend to continue. My Lords, can I be thankful to Your Lordships for  
 12 your kindness?

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you, Mr. Devrajan. Yes, Mr. Parekh.

15

16 **SAMEER PAREKH:** I'll attempt to answer the questions that have come from the bench.  
 17 And first, My Lord, let me answer on the interpretation of Article 39(b). And, My Lord, the  
 18 moment we consider, the place in which this Article appears, the interpretation is quite  
 19 evident, and in fact, the *Ranganatha Reddy* judgment itself explains why, they specifically  
 20 said that we are not endorsing what Justice Krishna has said. And let me just indicate why.  
 21 29(b) is one of the duties of the states. It's not one of the powers. And that's one of the answer  
 22 to My Lord's question. Does 29(b), if My Lords interpret it, Article 29(b)...

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Article?

25

26 **SAMEER PAREKH:** Article 39(b). My Lords interprets it narrowly, does it impact the power  
 27 of the state to acquire, say, the coal mines or land or other properties? Now *Ranganatha*  
 28 *Reddy* itself answers and therefore, let me just put it in this manner. There are three different  
 29 sets of provisions in the Constitution. First is Article 245 onwards which are the Legislative  
 30 power of the State, which include the power to acquire land. And as *Ranganatha Reddy*  
 31 says that, seen with the concept of eminent domain, power to acquire land, et cetera, is all  
 32 covered in the Legislative power of the state. So therefore, whether 39(b) exists or not in the  
 33 Constitution, the power to acquire land, give it away, et cetera is all part of 245 onwards, the  
 34 Legislative powers of the Government, the Union and the State. Now, what are the principles  
 35 that they are to be followed? Again, *Ranganatha Reddy* records that it must be a public  
 36 purpose. Suppose in that case, it was transport permits, transport permits were acquired, fair  
 37 compensation was given, the Court said certainly the State has the power to acquire transport

1 permit. The only test is compensation, public purpose. If these two tests are met, we approve  
2 that. There is no difficulty with the Act. We don't have to touch 31C. That is valid as it is. 39(b),  
3 (c) are therefore irrelevant. And that's what the majority says in **Ranganatha Reddy**. Now,  
4 therefore, we now come to the two parts, namely Part 3 and Part 4. What are these parts and  
5 how do you interpret, and what is the principle that My Lords will consider, while interpreting  
6 these provisions? Article 3 is a fetter on the power of the State. My Lords are, of course,  
7 familiar, I'm not going to expound on that. Part 4 is a duty of the State, and therefore 37  
8 onwards starts with what are your duties. First, it defines the State. Who is the State? What  
9 are their powers? What are the duties? Now, once, My Lords considers holistically the  
10 provisions of Part 4, it would be evident that Part 4, 39(b) is a duty of the State to use material  
11 resources of the community for the benefit, let me just read that, to subserve the common  
12 good. Now, seen as a duty, the only meaning, my humble submission is, that you can ascribe  
13 to 39(b), is that when there is ownership and control of material resources of the community,  
14 community can be State, a body under the State, like the MHADA, the Panchayat and various  
15 other bodies. And those Panchayat et cetera, are also provided herein. You have a duty to use  
16 the goods or material resources of the community to subserve the common good. It's a duty of  
17 the State. S, do not use the material resource of the community, not to subserve the common  
18 good. It stands to reason. And therefore 39(b) is a very limited provision, which requires the  
19 State to act in a manner to subserve the common good. And therefore our humble submission  
20 is, that when you read and why the words "of the community" are used is very crucial in  
21 interpreting 39(b). Because otherwise, it would have simply stated, that material resources  
22 should be distributed to serve the common good. It doesn't say that. It says material ownership  
23 and control of the material resource of the community, it must necessarily mean, in our  
24 humble submission, resources which are controlled by the State in some manner, which will  
25 subserve the common good. And of course, we leave aside 31C for the moment, this is the only  
26 consistent interpretation that can be given to 39(b). Therefore, we are on both parts. First it  
27 should be, and then I'll come to the... touch upon the Act also.

28  
29 There should be ownership and control of material resources. I do not want to dispute that a  
30 house is a material resource. No difficulty with that. But therefore, is it a material resource of  
31 the community for the purposes of Article 39? In some other context, maybe. Certainly. In a  
32 context, you may say that the housing is part of the community's assets, no difficulty. But when  
33 you are casting a duty on the State that use the resources of the community for common good,  
34 what are you trying to imply or mean is the submission that I'm seeking to make. And it can  
35 only mean goods controlled by State in some manner- directly, indirectly, etc. And that also  
36 follows, therefore and therefore, what Justice Krishna Iyer says and Mr. Devrajan therefore,  
37 was rightly pointing out that if you construe it in this manner to say that 39(b) will also apply



1 to private goods, then you have, what in fact, Justice Krishna Iyer does advocate is that, please  
2 acquire private property and distribute it. That is too extreme a view, in my humble  
3 submission. It's too extreme, it's a Marxist concept that you acquire everybody's land and give  
4 it to everybody else. That is not in our humble submission the intent of 39(b). It cannot be  
5 interpreted in that manner. The duty being cast on the State is not that go and acquire  
6 everybody's private property and give it to everybody else. That's not in our humble  
7 submission, what 39(b) is seeking to achieve.

8

9 **JUSTICE B. V. NAGARATHNA:** One of the public purposes under the Land Acquisition  
10 Act, is to acquire land and give it to the persons who do not have a site or those who are landless  
11 in the sense, to give them a house.

12

13 **SAMEER PAREKH:** I'm grateful. And therefore *Ranganatha Reddy* says for that you  
14 don't need 31C, 31B, 31A. You don't need 39(b) and (c). That is inherent in Eminent Domain  
15 Doctrine, because you can acquire land only for public purpose. If you acquire land, you  
16 acquire a coal mine, you acquire a estate, zamindari, give it to the tiller, that's your power  
17 under 245. Nobody can take it away. In fact...

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Material resources of the community must  
20 mean resources which are controlled by the State.

21

22 **SAMEER PAREKH:** I am deeply obliged. And that can and that is the only meaning.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** ... private property.

25

26 **SAMEER PAREKH:** That only meaning that would make sense because if you forget 31C for  
27 a moment, that's the only logical meaning that you can ascribe to 39(b), which is the duty of  
28 the State. The duty of the State is use your resources for public good. It is not to say that you  
29 please go and acquire everybody's private property.

30

31 **JUSTICE SUDHANSHU DHULIA:** Purpose of 39(b). If we read 39(b), like you want us to  
32 read, there's no purpose of 39(b).

33

34 **SAMEER PAREKH:** Lordship, there is.

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36 **JUSTICE SUDHANSHU DHULIA:** Purpose of 39(b). What is the purpose? If I fully  
37 understand, to remove equality.

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**SAMEER PAREKH:** Lordships.

**JUSTICE SUDHANSHU DHULIA:** To have a fair, equal distribution.

**SAMEER PAREKH:** Absolutely.

**JUSTICE SUDHANSHU DHULIA:** Even if 39(b) is not there, or we agree with the interpretation you want us to agree with, which does not include private property, how will you escape 38 Clause 2? The State will still have power to do what it can, under 39(b).

**SAMEER PAREKH:** Certainly. I have no difficulty. I am not at all suggesting for a moment.

**JUSTICE SUDHANSHU DHULIA:** 31C argument we don't.

**SAMEER PAREKH:** In fact, what My Lord is raised is precisely the point I wish to raise. It is of seminal importance, how My Lords interprets 39(b). Power, it's a duty. The power or duty under 39(b) must be exercised consistent with the rest of the Constitution, including various restrictions on the powers of the State Legislature or the Central Legislature. I have no quarrel, no difficulty, that State can acquire any land for public purpose, use it for various, but 39(b) is not saying you shall go and acquire all private properties and redistribute it. That's not our Constitution. That may be a Marxist Constitution. Our Constitution is, you can acquire it. 300A exist. 39(b) has to be read in accordance with 300A. If my property is taken, you must give me proper compensation. You cannot give me a illusionary compensation. So, 39(b) duty, please use it for common good. No difficulty. But you can't say I will take it from one party and give it to another private party. That's not the intent of 39(b).

**JUSTICE SUDHANSHU DHULIA:** How is a co-operative society a private party?

**SAMEER PAREKH:** I'll come to the Act itself in a minute, because Act there is Chapter VIII and Chapter VIII-A. In fact, VIII-A, has come because of failure of the State. I'll just indicate that in a minute.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** So, if we don't accept the interpretation of 39(b), which has been placed by Justice Krishna Iyer in *Ranganatha Reddy's* case, that would not render the act *ipso facto*, unconstitutional.

1 **SAMEER PAREKH:** No.

2

3 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It's just that the Act would then have to  
4 withstand the scrutiny of Article 14 and 19.

5

6 **SAMEER PAREKH:** I am deeply... I'm grateful. I'm grateful. That is all I was trying to say.  
7 That the power to pass legislation is there. It must meet the rest of the parameters of the  
8 Constitution- 14, 19, 21, 300A and there are other provisions that we are relying on. Now, only  
9 benefit was, under 31C, you have an additional protection. 14, 19 are out. 21 and 300A is still  
10 available. Now that little protection goes away. That also after *Coelho*, we don't know how  
11 My Lords will take that view. What is the scope of challenge under 14, 19 also, that we'll see  
12 separately. But under, only Article 31C, if 39(b) is sought to be subserved, only thing Article  
13 31C does is, remove the challenge under 14 and 19. Rest of the challenges still remain.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You say that you have no protection of 31C,  
16 because there's no nexus with 39(b). The law has to then meet the... past master under Article  
17 14 and 19.

18

19 **SAMEER PAREKH:** 14, 19 is... Lordships, absolutely. But even without that I still have 21  
20 and 300A, and after *K. T. Plantation*...

21

22 **JUSTICE B. V. NAGARATHNA:** You say in this *Ranganatha Reddy's* case, that Article  
23 39(b) was not applicable. What was the reason given, because that is reversed by the Supreme  
24 Court?

25

26 **SAMEER PAREKH:** I'll take out the High Court judgment. Supreme Court simply says, that  
27 you have a power to acquire. That has got nothing to do with 31C. You have to meet two  
28 requirements and two requirements alone. Public purpose, fair compensation. High Court,  
29 having upheld both these, should not have interfered. And that's the majority judgment.  
30 Therefore, my test, of your power to acquire a property, will be two and only two, nothing else.  
31 If you meet this, then all these 14, 19, 21 challenges fall apart. You don't have to go there. That's  
32 what the majority says. So, it says, once I find reasonable compensation and public purpose,  
33 it is valid under 14, 19, 21 straightaway. All this is all irrelevant. Therefore, we uphold the law.

34

35 **JUSTICE B. V. NAGARATHNA:** No, they struck it down. Nationalization..

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37 **SAMEER PAREKH:** That's the High Court. Ladyship is right.

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**JUSTICE B. V. NAGARATHNA:** On the ground that Article 39(b) was not applicable to the exercise of power, after that Legislation.

**SAMEER PAREKH:** Therefore, if My Lady permits...

**JUSTICE B. V. NAGARATHNA:** There are reasons given for that.

**SAMEER PAREKH:** Absolutely.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Anything else now?

**SAMEER PAREKH:** Yes. Just one more point, about the Legislation. There are two chapters, Chapter VIII and VIII-A, and that's a little important. VIII, cess was imposed from '76 onwards, by the... by MHADA. The Board was set up. 10%, I had to pay, that's the landlords, 15% by the tenants, of the circle rate. So, even if I'm getting some Rs. 50 or Rs. 100 rent, I have to pay cess on these properties from '76 onwards. And the reason for the cess was that MHADA will collect the cess and repair all these buildings, because I'm not giving you the rental. I hope I'm making myself clear. And therefore, Chapter VIII put the obligation on MHADA to find out how the property is dilapidated. MHADA was given huge chunks of land. They have some 2000 acres, if I remember correctly, of land given. MHADA had to carry out these repair obligations taking money from me. So, 10% of circle rate I pay, 15% tenants pay. MHADA collects that money. They have to come on a yearly or whatever, a certain period, they have to come and check the strength of the building and whether it's dilapidated. It was MHADA's duty to repair and then give it back to the landlords and the tenant. MHADA, and those reports are also on record. MHADA comes and says "We are incapable of doing this, although we'll continue to take the cess." That's why these are category A, cess building. So, they keep taking the money, and say, we can't do anything. And then they say, "Because I have failed, now I will give it to the tenants." That's what has happened. And now, the requirement of dilapidated is gone in Chapter VIII-A. So, any building, 70 occupiers, may not even be tenants... occupier definition is something also we're challenging. Go ahead and say, now, whoever, some trespasser is sitting there, he's part of 70%. He'll come and say, "I wanted your building. You spent a lot of money despite no rent. You kept it up, it's in great shape, but I want it. I will take it." That's Chapter VIII-A.

My Lords, in fact purpose, if 39(b), there was a purpose, Chapter VIII satisfies that, namely MHADA has to spend money which they recovered from us to maintain the building. That

1 would be public purpose. No difficulty. Now, what they're doing is, we are incapable, they have  
2 given a report as we are incompetent and incapable and my words not theirs, but they  
3 effectively say that. And so therefore, you allow them to take over. So, that's the situation.  
4 Therefore, Chapter VIII, I can understand, says, subserve public purpose, we will repair it, the  
5 landlord is not doing. And this whole situation is created by freezing the rent. Now, if you give  
6 me freezing, even if you froze the rent, if at least you had given me the ability to raise the cost  
7 of my repairs, I would have carried out. You block me in every way. Then you charge me cess.  
8 So, I am getting almost nothing by rent. Then I'm paying 10% of circle rate to the Government,  
9 for repair of my building, and then you say, now repair or not, let the tenant take it away. Now,  
10 can an Act of this sort be protected by 39(b)? My submission is known. 39(b) has to subserve  
11 the public good. Public good will be, I can, My Lord the Chief Justice mentioned, if you want  
12 to protect buildings, I understand. Now, does VIII-A say that only dilapidated buildings will  
13 be taken over? No. They say any building that 70% of their tenants want. Therefore, it doesn't  
14 even subserve any purpose. What is happening, is just unfair. For 85 years now, rents have  
15 been frozen. I am obliged to keep my building in maintenance and good repair. But I'm not  
16 allowed to collect the money, and in addition, I have to pay the cess, and MHADA says I can't  
17 repair it. So, now, give it away. Now, these are all hard-earned money, all the reports, in fact,  
18 when we go to the smaller bench, five judges or wherever, My Lords send us, we'll point all  
19 this out. Their own report says, most landlords have put every bit of their hard-earned money  
20 to make their house. They were relying on the income of this house to sustain themselves. Most  
21 of the landlords, specifically these buildings that we are concerned with, none of them can fend  
22 for themselves. In fact, the landlords here are the one who are poor. Because they do not have  
23 earned, access. Yeah, but I said this is what I'll be arguing. So, I'm entitled to say that. So  
24 therefore, I'm submitting that, we will be submitting, that in fact 39(b) purpose is not  
25 subserved in any way. This is your, so to say, conduct, and, if I may use the word 'politics of  
26 the State' that has created this situation, where you're punishing me for your own failures. You  
27 are unable to... and the Presidential assent that the Respondents will strongly rely on. The  
28 Presidential assent says, I'm giving you this assent on the assumption that you will raise rents  
29 in future. This Hon'ble Court in **Malpe Vishwanath Acharya** said, that you will raise rents  
30 in future. There is model... the Union Government, the Parliament has passed the Model Rent  
31 Act, which says over a period of time for these old Rent Act provisions, over a period of time,  
32 the rents will be increased so that over ten years, five years, you bring them in line with the  
33 present rate. Now, making this MHADA, it will be completely unconscionable to allow a law  
34 of this sort, where the failure is of the Legislature not taking care of the situation, not taking  
35 care of the problem, and their own default, they want to correct by taking away my property.  
36 That's the situation. Can it at all be covered by 39(b), is our submission. And therefore, once  
37 you see 39(b) in the context, namely Directive Principles, obligations of the State. These are

1 not my obligations. They are your obligations, and you're in breach of your obligations under  
2 Chapter VIII. And having failed in your duty to maintain this building. Now you can't trust  
3 Chapter VIII and say, now 100 times monthly and not even yearly rent. One month's rent, 100  
4 times or Rs. 50 rent, give 100 into 50.

5

6 **H. DEVRAJAN:** That rent is of 1940.

7

8 **SAMEER PAREKH:** Correct. Rent is of 1940. I'm obliged. You pay 100 times 1940 rent and  
9 we put all the wholesale price index, et cetera. Just the inflation has gone up more than 1000%,  
10 1000 times or something, and of course, the rental prices have gone up. And this is in fact, and  
11 My Lord, the Chief Justice, respond to your question, all the reports of the Government,  
12 Respondent, State Government, say that, in fact, all these provisions are the one affecting the  
13 housing stock in Bombay. Nobody is ready to build, nobody is ready to maintain, more supply  
14 is not coming, because you've created a situation which is unsustainable. So, to answer the  
15 question, and of course, we'll take that later. But to answer the 39(b) question also, these Acts  
16 which are under challenge are the cost of the problem. They're not the solution. In fact, if they  
17 act reasonably, make proper changes, et cetera, the housing stock will increase, the tenants  
18 will have the money, landlords will have the money to repair them, keep them in good repair  
19 as they do it in other places. And therefore, just to summarize and conclude, My Lords, our  
20 submission is 39(b) must be seen in the context of the entire Constitution. I have all various  
21 other rights in the Constitution. My land can be taken over in certain cases, no difficulty, but  
22 you must comply with all other requirements of the Constitution. By this method of 39(b), you  
23 say now I want to distribute your land to some other private party, and I've taken it. That's not  
24 the interpretation that a Constitution like ours can sustain. It must be, maybe in a Marxist  
25 Constitution, certainly, you take everybody's land and make it a communal land. And that's  
26 the Marxist theory, certainly not under our Constitution, which still has 300A, which possibly  
27 might be a higher right than the rights we had earlier, because now the right to property in **K.**  
28 **T. Plantation** judgment, My Lords have actually said that. 300A is now a higher right, it  
29 cannot be suspended at all, you cannot give illusionary compensation, you must give a fair and  
30 reasonable compensation, you must have a public purpose. Then you can acquire a land. No  
31 difficulty. But therefore I submit My Lords in conclusion, that 39(b), please interpret it in a  
32 manner that subserves the purpose of the Constitution. Read it holistically, read it with all the  
33 provisions of the Constitution and certainly the only conclusion that can come is this is a duty  
34 of the state. It is not the power to take away a private party's land and give it to another. So,  
35 that's it My Lords. I'm deeply grateful.

36

1 **ZAL ANDHYARUJINA:** Please, My Lord. Before we had divided the work, I had myself  
2 prepared a small note on this aspect. I've taken the liberty of having it uploaded but, My Lord,  
3 may I first address your Lordships on two aspects?  
4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.  
6

7 **ZAL ANDHYARUJINA:** May I address your Lordships on two aspects before going there?  
8 The first is, I want to make some arguments in support of what my learned friends have said.  
9 My Lord the second is what I want to argue a point on demurrer. My Lord, I want to argue a  
10 point, accepting, that theoretically and academically, it is possible that property could form a  
11 part of 39(b) but that if you accept that, the distinction between private property and public  
12 property must effectively be at vanishing point. My Lord, so I want to address that second  
13 argument before Your Lordships as well. So, My Lord, these two. I believe, that no real reading  
14 of the Directive Principles chapter can really be understood, without a preface. My Lord, as  
15 Your Lordships are well aware, that at the time of the Constituent Assembly and the formation  
16 of the Constitution it was always envisaged that Directive Principles would be very much on  
17 the same footing as fundamental rights. My Lord, the often colloquialism which is used is to  
18 say that fundamental rights are somehow superior to Directive Principles  
19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** I just said that, that these are two wheels of  
21 [UNCLEAR].  
22

23 **ZAL ANDHYARUJINA:** Exactly, exactly. And therefore, My Lord, it is always a matter of  
24 balance when we go to the Directive Principles, they've always got to be balanced with the  
25 other provisions in the Constitution. But I think it is also important to remember that till 1978,  
26 we had the entrenched fundamental Right of Property, My Lord, which was in 19(1)(f). My  
27 Lord, and 31, which took into account the concept of Eminent Domain, that if a property is to  
28 be acquired, it could be acquired, not only for a public purpose and upon the payment of fair  
29 compensation. Now, My Lord, that came to be deleted for entirely different reasons in 1978.  
30 But when Your Lordships look at 39(b), in my respectful submission, it is important to bear in  
31 mind, that that is how the Constitution first looked. So, on the one hand, we had the right to  
32 property, on the other hand, we had what was undoubtedly a social charter in the need, to My  
33 Lord Justice Dhulia's point, to alleviate inequality and to distribute property. And any  
34 construction that we arrive at of 39(b) in my respectful submission must take into account this  
35 context. My Lord, having said that, may I request Your Lordships just to see the section with  
36 me for a minute. I just want to point out to Your Lordships that there are three material parts

1 of this section, but the first is what is to be distributed, is the ownership and control of, what  
2 is to be distributed, is the ownership and control of something else.

3

4 So, there are two particular indicia of that something else, which is to be distributed-  
5 ownership and control. And what that is, is, one compendious composite expression, the  
6 material resources of the community. The latter part, is that the distribution is to subserve the  
7 common goal. But that's not so important for the purpose of the current reading. But, it is my  
8 respectful submission, to Your Lordships, that, on my on my demurrer argument, when I  
9 address it, that My Lord, the Chief Justice was not entirely wrong. I think it would be futile  
10 and academic, to try to propose a conceptual argument, that it is possible, that private property  
11 can be introduced into the concept of material resources of the community. But the real  
12 question to my mind, is what is the nature of that private property that will fit within this  
13 compendious expression, 'material resources of the community'. We know that it must have  
14 certain characteristics. It must be material resource. And, I have some definition to show Your  
15 Lordship of that, and it must be of the community. So, My Lord, my learned friend's point...  
16 My learned friend's fees from today's appearance... Your Lordships said, distributed to  
17 taxation, separate provision for that - Article 265. When My Lady spoke of land acquisition,  
18 separate provision from that, originally My Lord, and interestingly, in **Bhim Singh Ji's** case,  
19 there was a challenge actually, to the Urban Land Ceiling Act. The challenge was on the 39(b)  
20 grounds, and actually, it was negative, on the grounds that the 31C protection, was available  
21 on the ground of 39(b), as I'll show My Lady also from the High Court. Actually, Justice  
22 Untwalia's judgment, refers also to the challenge in the High Court, which I'll just show My  
23 Lady in a minute or so. But now to come back to this point. If we acknowledge the fact that  
24 private property can fit within the expression 'material resource of the community', it must  
25 satisfy all these requirements. It must be private property, which has the characteristics of  
26 being a resource, and it must be a material resource of the community. Having said that, My  
27 Lord, may I show Your Lordships my note? My Lord, I've made some submissions in my note  
28 and please bear in mind, my note was slightly focused on a different point, and that's reflected  
29 in the chapter, but it really addresses this point. My Lord, it is in the morning Google link, at  
30 09:00 or so, which was sent to Your Lordships. It's called Chapter VIII-A does not receive the  
31 protection of... sorry, just now... Thank you. Your Lordships have it? My Lords, para 2, but  
32 para 2 is what I've already made my submissions on... but can I take Your Lordship  
33 straightaway to paragraph 4? Yes please, My Lords.

34

35 Yes, My Lord. Yes, page 48. That's right. And if I can actually, to My Lord, the Chief Justice's  
36 point. Para 2 actually states it a lot better than I said it, My Lord. May I just read it? Can I just  
37 read it to Your Lordship, paragraph 2, My Lord? State policy in Article 39(b) has three



1 ingredients. There must be a material resource. More importantly, it must be a material  
2 resource of the community. To My Lord Justice Bindal's point, something which I'll just  
3 develop. My Lord, if the material resources is not of the community, it is not the subject of the  
4 policy. There must be a distribution of the ownership and control of the material resource.  
5 Article 39(b) does not say, that the material resources are to be distributed. Mere distribution  
6 of material resources without distributing the element of ownership and control is not the  
7 subject of policy. So, the distribution, as I mentioned to Your Lordship, is with regard to  
8 ownership and control.

9  
10 The distribution must be such as to serve the common good, distribution which does not  
11 subserve the common good, is not the subject of the policy. I'll then skip. My Lord, please come  
12 to paragraph 4. Now My Lord, some dictionary meanings, My Lord, because we don't have any  
13 actual legal construction of these terms, 'Material Resource'. The dictionary meaning of  
14 resource and resources is "a means of... Your Lordships have it? There is a means of supplying  
15 a deficiency, a stock or reserve which can be drawn, or when necessary available assets. And  
16 plural, the collective means possessed by a country for its own support or defence example,  
17 countries with large natural resources. So that's the definition with regard to resource, it's  
18 normally used in the context of community. Sometimes in plural, it is used in the context of  
19 State property, but it doesn't preclude, it being also of private ownership, as I'll come to.  
20 'Resource.' Something which lies ready for use or that can be drawn upon for aid or to take  
21 care of a need. The plural is available money or property, wealth and assets the plural is  
22 something that a country or state, et cetera, has that can be used to its advantage, natural  
23 resources, including coal and oil, a means of accomplishing something. My Lord, that's what  
24 Webster says. Now, Article 39(b) uses the plural "resources", which brings in the national or  
25 community aspect of the meaning of resource that this meaning in Article 39(b) is evident  
26 from the qualification of the community in the Article, the meaning of the word "community"  
27 itself is a body of persons. The word "material" as an adjective, in this context means important  
28 and essential. Material resources of the community can therefore mean natural resources,  
29 illustratively, which are those of the country or the nation or the means of production, which  
30 in a large sense can be said to be of a community, even though they are in private hands. The  
31 concept negatives any property in which there is no interest of the community. My Lord in  
32 ***Karnataka and Ranganatha Reddy***, Justice Krishna cites the meaning of resources  
33 from a dictionary from Black's dictionary and says, this. Money or any property that can be  
34 converted into supplies means of raising monies or supplies, capabilities of raising wealth or  
35 to supply necessary wants available means of capability of any kind. This definition is no  
36 longer found in the dictionary. It's not available. By itself this definition cannot be applied to  
37 the concept of 39(b) as it does not bring in the interest of the community as a resource. Then

1 I've cited the observation, which Your Lordship already read. I have pointed out that it has  
2 been followed elsewhere. And in 4.10, My Lord, what I said is this, this formulation of material  
3 resources is too widely stated. Private sources of meeting material needs are not material  
4 resources of the community, not everything of value in the world is a material resource. The  
5 Constitution does not embody a political or social theory that because the individual is a  
6 member of the community, his resources, however small and humble are necessary part of the  
7 community. That is an interpretive argument based on this aspect of the matter.

8

9 My Lord, just one last point that I have for Your Lordship. To become a material resource of a  
10 community, a particular class of property must have some homogeneity, or it must have some  
11 common characteristic. My Lord, the housing stock that is under rent and subject to MHADA  
12 acquisition is of the most diverse and varied kind. My Lord, if Your Lordships were to go to  
13 Bombay, to perhaps what is the most affluent area of Bombay, Carmichael Road, Your  
14 Lordship will find extremely wealthy people living in lavish style, in well-appointed buildings.  
15 But on the other hand, if Your Lordships were to go to some of the ghettos of Bombay, Your  
16 Lordships would find people almost at the point of destitution, who are also tenants. So, the  
17 housing stock lacks a quality of homogeneity. It is not possible to say that in every case, the  
18 housing stock, which is the subject of acquisition under VIII-A can have a homogeneous  
19 nature, and therefore according to my respectful submission, can never fall within the  
20 definition of the material resource of the community. I'm obliged.

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you.

23

24 **HARSHVIR PRATAP SHARMA:** My Lord, before coming to this... evolved material  
25 resources, I will go to this Article 366(12). Goods, is where the definition, because if we have  
26 to enlarge the definition of 39(b) to include everything, which will include a good also, all  
27 material, commodities and articles. It means, by way of this interpretation, all material  
28 resources are different than the goods. So therefore, now the advancement of the Constitution  
29 of India, an amendment, now kindly have 17th Amendment, because the right to property was  
30 always a thing, which was being taken away. Now, the 17th Amendment, when it came to 31A,  
31 when the provision was made, if you have to take the property of someone, make the payment  
32 at the market value. That was 17. Therefore, that comes 44. And the third one comes, the 73rd  
33 Constitution Amendment, which has made the country three tier system. And in relation to  
34 that, I will be making my submission. My Lord may kindly have 31A, only to the extent of  
35 market value. 31A proviso. 'Provided further where any law makes any provision of acquisition  
36 of a State comprises land personal cultivation...', whatever... we know that Urban Land Ceiling  
37 has gone. So, there is no... Because when we go to the *Kesavananda Bharati*, that was the

1 concept of creating a new public order or social order. Now, with the advancement, after 75  
2 years, we are into a different era, and we have come from nationalization to disinvestment. So,  
3 the meaning what was there... because at that time, when we interpreted these laws, Article 31  
4 was there. After 44th Amendment, Article 31 has gone, and that time our 19(1)(f) was there.  
5 Right to Property was a fundamental right. After that, now it is Article 300A. So, that... to that  
6 extent, kindly have 17th Amendment, which says you have to pay the market value. Now, after  
7 that, My Lord, kindly have, the Article 243G, because after 73rd Amendment, the power had  
8 been entrusted to the local self or the public, of managing the utility or any good. To that  
9 extent, my brothers who have placed the subject -- now two chapters have been added, part IX  
10 and part IXA, of the Constitution of India - Power, Authority and Responsibility of Panchayat.  
11 This is for common good, not by giving it to the hand of certain number of persons by  
12 acquiring. Now, My Lord, I pause for a minute. My Lord, Justice Manoj Misra is there, My  
13 Lord, Justice Dhulia is there, and even I have done some cases, where the properties under  
14 20-point program were given to certain persons. They paid some money by getting a  
15 transferable right and they sold it. This is the hard reality of the era. Kindly have... 'Power...'  
16 and I'm coming to these two part, (a) or (b), Subject to the provisions of this Constitution the  
17 Legislature of a State may, by law, endow the Panchayats with such powers and authority and  
18 may be necessary to enable them to function as institutions of self-government and such law  
19 may contain provisions for the devolution of powers and responsibilities upon Panchayats, at  
20 the appropriate level, subject to such conditions as may be specified therein, with respect to,  
21 (a) the preparation of plans for economic development...'. This is 39(b), and social justice.  
22 Second part, 'the implementation of schemes of the development...'. What has been done in the  
23 State of West Bengal, retrospectively from 1969, in the year 1981, definition of land has been  
24 enlarged to include, mill, factory, even the religious institutions have been brought in within  
25 the definition of land, and we apply with that. So to that extent, what I respectfully submit,  
26 whenever 39(b) comes there has to be distribution. By whom? Now, in the backdrop of this, I  
27 read Article 39.

28  
29 And then I will come to the Schedule 11 and 12. In Bombay, one of the feature is the slum,  
30 which comes under Schedule 12, in the Constitution of India. So we are interpreting the...  
31 because in **Sanjeev Coke** at para 20, this Hon'ble Court said, you cannot take that under  
32 39(b), you cannot take the entire industry. There is a cross. So, therefore you cannot make a  
33 person without livelihood. Now, concept is this, I will read two paragraphs. 239(b). 'The  
34 ownership and control of all material resources'. If the material resources is a good, then the  
35 material resources is something different, which is to be used for a common public, for a  
36 common larger benefit and interest. Not for the merely purpose of living or housing or just for  
37 the purpose of making the social standard. It is something very, very big step, which has to

1 be... because at the time of the nationalization cases, certain companies were in the hand of  
2 Britishers.

3

4 **JUSTICE HRISHIKESH ROY:** What is the point that you are trying to make?

5

6 **HARSHVIR PRATAP SHARMA:** Now, what I submit, number one - 'material resources'  
7 is a word which is to be used in a very careful manner, to include only the resources which are  
8 essential to the society and not the private properties.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That point has been made before.

11

12 **HARSHVIR PRATAP SHARMA:** Now two 'concentration of the wealth'. Concentration of  
13 the wealth, not by taking away the right of a private person depriving his right to livelihood,  
14 and give it to someone else. Applying the ceiling limit, or applying a house, or taking away the  
15 right of a livelihood of someone, the concentration, suppose in the West Bengal, the ceiling  
16 limit has been imposed with effect from 1969. Now after that, the ceiling limit with the  
17 retrospective effect, our houses and property, main factory, everything is being taken away.  
18 So, to that extent, in that context what is the 'concentration of the wealth'? Now, in my written  
19 submission, I have dealt with the definition part. I leave it to that. Now, second submission,  
20 which I am going to make, My Lord, 300A- 'Right to life with the Right of Livelihood' and  
21 300A, because, now it is a constitutional right. Now constitutional right is a right after the  
22 advancement of so much of the jurisprudence of the property, it cannot be taken away on the  
23 name of merely concentration and applying the yard stick, which was in the year 1971 or '72.  
24 For that purpose, I merely read one paragraph from *Sanjeev Coke*.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What is the point that you are making now?

27

28 **HARSHVIR PRATAP SHARMA:** Now, the concept I'm making, this Hon'ble Court never  
29 approved that State has the power to acquire everything at their own. 39(b) rider came in  
30 *Sanjeev Coke*. The learned counsel... at page 2317, the learned counsel submitted Article  
31 39(b) would be attracted, if the industry as a whole are they nationalized. Not if only a part of  
32 industry. According to him, all the coke owned plant or whatever, they existed to be  
33 nationalized, but no privately owned property. We are unable to see any for the distribution  
34 between public, private and joint sector, range of any nationalization State policy, inherently  
35 inappropriate subject, scales of justice are not designed to weigh competing social economic  
36 factor in such a matter. Legislative wisdom must prevail with the judicial review, must abstain.  
37 To that extent, what I respectfully submit, did the right to property, which is now a

1 constitutional right, does not come within the purview of material resources. That is my  
2 submission.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Property is not a material resource?

5

6 **HARSHVIR PRATAP SHARMA:** But, property if owned for a livelihood, if owned for  
7 livelihood. If a person is having a property which is not for livelihood, other than for livelihood.  
8 There has to be a distinction between a livelihood of a property, and a property which is not  
9 for livelihood. Suppose in Bombay, I have one house and that house has been taken away. That  
10 will not be for the purpose of common good, by depriving me from my right of livelihood.

11

12 **JUSTICE RAJESH BINDAL:** It can be. Suppose if you have house in 200 acres, then it will  
13 be taken away?

14

15 **HARSHVIR PRATAP SHARMA:** My Lord house for my right to livelihood, then Article 21  
16 survives.

17

18 **JUSTICE RAJESH BINDAL:** For equal distribution.

19

20 **HARSHVIR PRATAP SHARMA:** For equal distribution, then the law has to be there that  
21 nobody can have a house of more than 50 yards. Equal distribution, including me, including  
22 me, not by taking away my right.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you, Mr. Sharma. So, tomorrow  
25 morning, we'll start with the learned Attorney General, tomorrow morning.

26

27 **VANSHITA SHUKLA:** Your Lordships can we just have 10 minutes of Your Lordships'  
28 time?

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Sorry?

31

32 **PETITIONER'S COUNSEL:** We just want to make very brief submissions tomorrow  
33 morning. Ten minutes, My Lord, between the two of us.

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alright, 10 minutes in the morning and then...

36

37 **PETITIONER'S COUNSEL:** We'll share. Grateful.

1

2 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The notes and compilations sent by Mr.  
3 Andhyarujina and Mr. Devrajan are without volume numbers. So please make sure that you  
4 put them all together in volume numbers, otherwise we'll never know. You can actually put  
5 yours as, give them specific volume numbers and then share it with the other side. So, they  
6 will also know.

7

8 **H. DEVRAJAN:** With Your Lords kind permission because what we have written, we have  
9 been asked not to get into it. Can we edit them and send it to you, My Lords? Because, see, we  
10 have gone on the basis that 31C, we could do argue. Lot of matters are related to 31C. Now we  
11 have not been allowed to argue that.

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But, do it by the evening today by say 8 o'clock  
14 in the night give it to the Court Master. And you can send the message to the Court Master  
15 when you have added it. Otherwise, he doesn't know that you have added it. So by 8 o'clock  
16 make sure all the edited compilations and volume wise are available with the Court Master.

17

18 **H. DEVRAJAN:** Please, My Lord. Obligated.

19

20

***END OF DAY'S PROCEEDINGS***