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A Matter Of Trust

SC's varied verdicts on state acquisition of pvt properties have been confusing. And people are suspicious of govts

TOI Editorials



Nine-judge benches in the Supreme Court are infrequent. But when they are formed and reach a decision, it should settle substantive questions of law. According to the National Judicial Data Grid, there are 136 pending cases (main and connected matters) for nine-judge benches. One such bench began its work this week to settle an issue that's been a cause of confusion for over four decades.

Not always in harmony | This case gives a sense of how the intersection of laws and judicial interpretation doesn't always lead to clarity. It sometimes leads to questions over the efficacy of constitution benches.

The origin goes back to 1977 when a seven-judge bench, interpreting Article 39(b), in a 4:3 decision concluded that privately owned resources did not fall within the scope of material resources of a community. In 1983, a five-judge bench relied on the minority opinion to interpret some laws. This was upheld by a nine-judge bench in 1997. However, in 2002, another bench wanted these inconsistent verdicts resolved. Over two decades later, SC has got down to it.

Current case | Maharashtra in 1986 passed a law that allowed a state body to acquire certain properties for restoration if 70% of owners consented. This law stated that it aimed to fulfil the principles advocated by the Constitution's Article 39(b). A body representing property owners challenged it, but there was no result. In 2019, this law was amended again to make time-bound redevelopment mandatory, failing which the state could take over the property.

Eminent domain | SC's bench will resolve accumulated inconsistencies, but there's a larger public policy issue at stake here. Every economically successful country has used the doctrine of eminent domain. It means the state can acquire private property to serve public interests. That's been the prerequisite for transformational infra development. The key however is that there has to be trust in the claim that forcible acquisition of private property is for a public purpose.

Trust, missing element | Property owners in Maharashtra who are litigating believe the law's real intent is to help real estate firms. Similar distrust among farmers has also stalled adjustments in India's land acquisition legislation.

SC's inconsistency across benches has created avoidable delays. It should end this time. But questions about efficacy will remain because if people lack trust in a law's intent, the answer lies in the governance system.



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चुनावों के बीच समाजवाद और पूंजीवाद का द्वंद्व

संपादकीय



निजी संपत्ति को लेकर समाजवादी और पूंजीवादी सोच का शाश्वत द्वंद्व एक बार फिर सबसे बड़ी कोर्ट में ही नहीं, एक सबसे पुरानी और दूसरी सबसे बड़ी पार्टी को चुनावी अखाड़े में लाया है। सवाल है कि क्या निजी संपत्ति को समाज का संसाधन मानते हुए उसे व्यापक लोक कल्याण के लिए राज्य द्वारा इस्तेमाल किया जा सकता है? आज से कुछ दशक पहले तक जनमानस में स्टेट सोशलिज्म की मार्क्सवादी अवधारणा सही मानी जाती थी। लेकिन चूंकि इसमें निजी संपत्ति के लिए प्रोत्साहन के तत्व विलुप्त थे लिहाजा विकास के लिए जरूरी उद्यमिता का अभाव पाया गया। विकासहीनता ने इस सिस्टम के प्रति पूरी दुनिया में अरुचि पैदा की।

नतीजतन नैतिक रूप से सही होने के बावजूद समाजवादी अवधारणा और उसकी राजनीतिक परिणति- कम्युनिज्म- अपने जन्म-स्थान से भी तिरोहित हो गई। आजाद भारत में पूंजीवाद खत्म करने के लिए निजी संपत्ति को मौलिक अधिकार से हटा दिया गया और नीति निदेशक तत्व के अनुच्छेद 39 (बी) में निजी संपत्ति को सामाजिक संसाधन माना गया। इसे चुनौती मिली भी तो सन् 1977 में। सुप्रीम कोर्ट की सात सदस्यीय बेंच ने 4-3 से इसे गलत माना लेकिन बाद की कई बेंचों ने माइनॉरिटी राय को उद्धृत करते हुए राज्य के अधिकारों को बहाल रखा। अब एक बार फिर नौ-मेम्बर बेंच ने इसे सुनना शुरू किया है। आम चुनावों के बीच ये मुद्दा सरगर्मियां बढ़ाएगा।