

PAPER.21

LEGAL INPUT AS EQUALIZER

By

D.K.Sampath

In the village S, the Panchayat board sat about organizing the use of poremboke land in S. No. 39/29. 50 cents were earmarked for well and mound. Another 50 cents for a garden. The remaining area in that S. No. was plotted into sites of 3 cents each. They were allotted to caste hindu villagers belonging to backward classes. It was also indicated that persons of scheduled Tribes were to be given plots there, but there were none of the tribal class in the village.

The Thalayari of the village, M, came to the mediation centre at Tiruporur in August '91 seeking resolution of a dispute between him and the villagers requesting his site, 3 cents in area. According to him, he had a patta in his wife's name issued by the government for that site. The Panchayat president and others were disturbing his enjoyment of the site. When both parties met at the centre, it was clear that the villagers did not want the thalayari living in the midst of caste Hindus. They said they had identified another area for Harijans and the thalayari has to go there. He has a plot allotted to him there. Further, negotiations were stalled by the villagers asking for a look at the patta of M's wife. He promised to produce it in a week.

The sequence of events showed that the resolution of Panchayat allocating plots was in March 1987 and the Patta of M's wife was dated July '87. The villagers relied on this to show that the Thalayari had wangled a Patta using his position as a revenue department employee, knowing the Panchayat lay out. (The Thalayari is a village menial servant). In fact, they offered, in the course of negotiations, treble the extent, 10 cents in the are reserved for Harijans, if the Thalayari would relinquish his claim to the disputed site. He firmly declined when asked if he would consider it as an exchange.

On paper, the Panchayat had allotted this plot to a case Hindu woman, N. The villagers had dismantled the hut put up by the Thalayari, had received Rs.50/- as advance towards the sale price of Rs.1500/- under an agreement to sell this plot to P. Both N and P came to the centre, but the villagers were more vociferous than N or P. Theirs was only a token presence.

As against about 7 or 8 persons, the Thalayari was holding his own unaided. Obviously, it was an unequal conflict. A Panchayat board member, son of the Panchayat President and a well to do pattadar, a member belonging to the ruling political party and the like made up the group of villagers. None had come forward in support of the Thalayari. The Thalayari was mostly on the defensive as he was ignorant, illiterate and outnumbered. The mediator intervened with a legal input to equalize the bargaining power. It was explained to him how the poremboke land vested in the government, how the Thalayari was a grantee from the government and how any lay out or allotment by the panchayat of a land not at its disposal would not prevail over the patta, irrespective of its being earlier or later to the resolution. Either the patta was got annulled or the site covered by patta was excluded from the lay out. Of course, the grantee can waive his right under the patta. It was at this stage that the villagers switched to the idea of an exchange for a larger plot of ten cents elsewhere. But, emboldened by the clarification of his legal right, the Thalayari dug himself in. He refused. He felt that he was being

hounded out of the area because of his cast. In equalising the bargaining power, did the mediator make the prospects of a settlement recede further ?

But, then, is a compromise faced by an unequal bargain worth striving for ?

These are questions that tax and baffle the mediator and he has to find out his answer in each dispute according to the changing contexts that emerge during the negotiations. Legal input is not to be used for raising technicalities in the way of a consensus, it is true. It is not to be in the form of a verdict, closing the avenues to conciliation. But, can it not be used as a corrective at appropriate stages to empower the powerless and to restore the rapidly receding balance during negotiations ? Proper doses, shrewd timing, discrete use and correctly spelt out explanations of legal positions may help to equalise the bargaining power of the disputants. The villagers sought cleverly to camouflage their intimidation of the Thalayari as collective benefit to a number of villagers being thwarted by a lone obstructor. To forestall the criticism of their excluding the Thalayari on grounds of cast they had included scheduled tribes as qualified for allotment in that area. But then, there were no tribal in the village. It was a well planned scheme to oust him, the Thalayari complained.

In fact, the villagers had another string to their bow. They objected that the patta was in his wife's name and that she should appear at the centre. They further objected that he had not produced the patta. They knew that the Thalayari and his wife had quarrelled and she had gone to her parent's home sometime earlier. But, he got the patta from her the following week for perusal at the mediation centre. The technicality of non-appearance of the Thalayari's wife was played down by the centre when the villagers grasped it as a last straw. It was not their stand that she had given up her rights. It was explained how her giving him the patta for production at the mediation betokened her authorising him to represent her interests. Such implications readily arise in informal proceedings and anyway, it was not for the villagers to exploit the domestic difference between Thalayari and his wife to deprive them of their property. Such exploitation has to be eschewed in mediation, it was explained. The informality and flexibility of mediation were designed to avoid such technicalities. The crux of the matter was that the cast hindu villagers did not want the Thalayari in that plot on grounds of cast and Thalayari resented it. In fact at the end of the day's session, when the parties were dispersing the President of the Thalayari association came to the mediation centre in connection with another dispute. He is himself a Thalayari in another village. When he was asked what he felt about the controversy in this dispute, he said he was living in a house purchased by him near the temple in the midst of caste hindus in his village and why should not M live in his site ? Does law recognise such distinction ? he asked. The villagers saw him talking to the mediator but would not join them. By then all the disputants had melted away leaving only the initiator and the President of the Thalayari association with the mediator !

The villagers tried to give the controversy a camouflage of a lone dissenter as against the rest of the village and use the democratic institution of Panchayat board to invest a clout for what was obviously a move against human dignity.

It can be seen in a larger context too. After all it was the government that granted the land to a member of the weaker section of the community. But, another limb of the constitutional set up, namely, the Panchayat was seeking to frustrate it. This betrayed how the values enshrined in the constitution do not inform the actions of all the departments down the line. They are found to be working at cross purposes. There is urgent need for infusing values at grass root level. It is this thinking that prompted