

by their nose got a temporary injunction from the sub-judge of Mahad against the Untouchables using the tank of the ground that it was the private property of one Mr. Chowdhari and the touchable classes. Having secured this respite from the authorities, the touchables thought that they had gained the upper hand at the expense of the Government and the Untouchables. Dr. Ambedkar at once saw through the game, but decided to postpone *Satyagraha* till the civil suit was disposed of. The suit came for hearing on 23rd February 1928 before Mr. Vaidya, the sub-Judge of Mahad, and Dr. Ambedkar by his lucid exposition not only got the injunction cancelled but also convinced the judge the *bona-fide* of their right to use the public tank. Since the ban has been removed, the tank is now to be open for public use as per the resolution of the Bombay Legislative Council.

***Satyagraha* to be Launched**

Now, in a public meeting held on Sunday the 26th February, in Bombay, attended by about 2,000 people, it was resolved to relaunch the *Satyagraha* at Mahad. The *Satyagraha* Committee is meeting shortly, and the exact date will be announced shortly.

Those who are following and studying the Untouchable Movement in this part of the country under the leadership of Dr. Ambedkar can very safely and boldly say that the movement is cosmopolitan in character. It is not simply for the opening of the tank for public use, but a movement of this kind with its manifold activities is directly paving the way for the evolution of the national movement for asserting their ordinary privileges of citizenship. It was only recently that Dr. Ambedkar announced his intention to open khadi centres for the Untouchables and thus help the great constructive programme blessed by Mahatmaji, with Khaddar on body and *Satyagraha* in mind against all evils, this movement is bound to succeed.

One word to my friends. As every good movement has to pass through various stages of obstacles and it will have to meet the friendly foes as well open foes-of whom the former are more dangerous-so also this *Satyagraha* has to face all the obstacles put on the way and come out triumphant at last. I only appeal to my friends that in facing these hardships from friends or foes, they

should not lose under any circumstances their courage, patience and perseverance but carry on the struggle to the successful end in all humility by peaceful and non-violent means.

May God give the strength to my suffering brethren and wisdom to the cast Hindus.”¹

Sub-Judge, Mahad, dissolved Mahad injunction—

Chawdar Tank-No Private Property Magistrate Regrets Grant of Injunction

“I cannot conclude this order without expressing my regret at the inconvenience and hardship caused to the defendants by the injunction granted by me, temporary though it was, and at having been instrumental in heaping one more wrong upon a community already labouring under the most cruel and unjust social wrongs. I dissolve the injunction issued by me”. So said the Sub-Judge while dissolving the injunction against Dr. Ambedkar and others.

It will be remembered that Dr. Ambedkar and others who went to offer *Satyagraha* at Mahad in the matter of taking water from the famous Chawdar tank were prevented from doing so by the injunction granted by Mr. G. V. Vaidya, Sub-Judge, Mahad, as applied for by Mr. Pandurang Raghunath Dharap and others, who claimed that the tank concerned was their private property. It is understood that Dr. Ambedkar and others, as also a number of caste Hindu people have decided to offer *Satyagraha* again. Probably they may restart the campaign on the first day of the Hindu New Year, i.e. about three weeks after, as the injunction against them has now been dissolved on the ground that the said tank is “Government municipal property.”

Why Injunction was granted

Delivering judgment of February 23rd the Sub-Judge observes. “The injunction had been granted on the *prima facie* presumption that the *Chawdar Tank* in suit was of the nature of private property. I have now to see whether on the evidence that is now produced for Defendants, that presumption stands or not. That presumption has, in my opinion, been strongly rebutted by the evidence now placed by the Defendants before me.”

¹ : The Bombay Chronicle, dated 2nd March 1928.

While examining the evidence, the sub-judge relies on copies of extracts from Revenue Records and certain other documents like applications from several people to the Municipality for special use of the water of the tank and definitely expresses the view. "All these papers strongly go to prove that the Chawdar Tank in suit is Government Property vesting in the Municipality and not private property of particular individuals as alleged by the Plaintiffs."

Conclusive Evidence

Continuing the judge says : "The presumption that the tank in suit is Municipal property is further strengthened by the fact that in the embankment of the tank, there are slabs of stones in two places bearing inscriptions engraved on them. On the application of Defendant's pleader, a Commissioner was appointed to visit the place and in the presence of the Court and the pleaders for both sides, to make facsimile of these inscriptions. This was done in the presence of the Court and Messrs Joshi and Sathe for Plaintiffs and Mr. Vaidya for the Defendants. Slab marked serial No. 2 bears a clear inscription of the words Municipality Mahad 1899 engraved in Marathi. On slab No. 1 some words are clearly visible while the others appeared to have been tampered with by some one and this tampering appeared to be quite fresh.

Plaintiff's Slender Case

As against all this evidence, plaintiffs rely upon the deed of partition (Ex. 45) of the Dharap family. In the face of all the evidence above referred to the mere fact that years ago, some members of the Dharap family effected, as between themselves a partition of the embankment in front of their house, does not signify much nor does the notice Ex. 44 given by the Municipality to one Diwakar Joshi to repair the embankments built by him in front of his house, as they were in a dilapidated condition and were rendering the water of the tank insanitary, signify much. It in no way constitutes an admission of Plaintiffs' right to the tank itself.

“No Special Preserve”

Whatever may be the final decision of the suit on its merits, I am, for the present, thoroughly satisfied, that the *Chawdar Tank* in suit is Government Municipal property and not the private property of particular individuals as alleged by Plaintiffs. The question then is whether plaintiffs have a right to exclude Defendants from enjoyment thereof. The answer is obviously “No”. In the case of such property there cannot be any reservation in favour of a particular class of community, and the Defendants have as much a right to its enjoyment as the Plaintiffs have. No question of irreparable injury therefore arises. In this case the property being Municipal property and the Defendant having as much a right to use it as the Plaintiffs, their exercise of that right cannot be said to cause any injury to Plaintiffs.

Lame Arguments of Plaintiffs’ Counsel

It is argued for the Plaintiffs by their learned pleader Mr. Virkar that on their own admission, the Defendants have not up to now enjoyed the use of the tank in suit. But, when once it is shown that the property is not private but public and open to all members of the public, the mere non-user of the tank by the Defendants during howsoever long a term of years cannot in any way derogate from their title. I am satisfied from the evidence produced before me that the tank in suit is not the private property of the Plaintiffs, but that it is Government Municipal property, and the Defendants have as much a right to its enjoyment as the Plaintiffs have and that any interference with the exercise of such right would be wholly illegal.

I cannot conclude this order without expressing my regret at the inconvenience and hardship caused to the Defendants by the injunction granted by me, temporary though it was, and at having been instrumental in heaping one more wrong upon a community already labouring under the most cruel and unjust social wrongs. I dissolve the injunction issued by me.” ¹

¹ : The Bombay Chronicle, dated 3rd March 1928.

Following is the Police Report of the meeting held at Bombay after dissolution of injunction—

“Untouchables and Satyagrah at Mahad

A public meeting of the Depressed Classes was held at Damodar Thakersey Hall on February 26th when G. N. Sahasrabudhe presided over an audience about 500 people.

Dr. B. R. Ambedkar, who was the principal speaker, said that as the Sub-Judge of the Mahad Court had dissolved the interim injunction against him and the *Satyagraha* Party, he would leave the question of resuming *Satyagraha* to the discretion of the *Satyagraha* Committee of Bombay.

Views expressed by “Indian National Herald” after cancellation of injunction—

“COMMON HUMAN RIGHTS

The Sub-Judge of Mahad having dissolved the temporary injunction issued by him against Dr. Ambedkar and other leaders of the Depressed Classes, the latter, it is understood, propose to assert their civic right to draw water from the public tank at Mahad. When in March last members of the Depressed Classes, who had previously met in a conference at the place, attempted to approach the tank they were roughly handled by the “higher” Caste Hindus, a few Chamars sustaining severe injuries. The leaders of these “higher” Caste Hindus then sought an injunction under section 144 Cr. P. C. from the District Collector, on the ground that the attempt of the “Untouchables” to take water from the tank, in contravention of the existing customary ban on them would spell danger to public peace.

The Collector, refused to take any action. They then applied to the Sub-Judge and succeeded in obtaining from him a temporary injunction against the leaders of the “Untouchables” and consequently the contemplated *Satyagraha* and march to the tank in a body with a view to draw water from it in defiance of the “Higher” Castes, had to be abandoned. Now, however the Sub-Judge has dissolved the injunction, declaring himself satisfied from the evidence that “any interference with the exercise of such

right would be wholly illegal.” That the so-called Higher Castes have absolutely no legal right to prevent any member of the public, from drawing water from a tank which is not private property and which they themselves must be fully aware is a Municipal Tank, would be admitted by any man; who is not blinded by caste prejudices. If the local Municipal authorities had any doubts in the matter the same has been set at rest by the resolution of the Bombay Legislative Council passed in September 1926, declaring that all Municipal Tanks, wells and *Dharmashalas* should be thrown open to all classes of public without any distinction. It is inconceivable that any section of the community, because of their own notions of personal “superiority” in point of caste, should be entitled to prevent any other section from benefiting from the amenities provided from public funds. Such a notion deserves to be knocked on the head, not only in the interests of the oppressed and suppressed classes, but also, and much more, in the interests of the so-called superior classes themselves. Such treatment of fellow beings besides being wholly iniquitous and unjustifiable is bound to have very undesirable consequences for the “Higher” Castes, for sooner or later the oppressed classes must come by the rights, human, civic and political, so long unjustly denied to them and then their exacerbated feelings might lead them to turn the tables on their former oppressors.

The alienation of the sympathy of a section of the Depressed Classes towards the national movement ought also to be a sufficient warning against the perpetuation of the present deplorable conditions. Let us hope that when in a few days Dr. Ambedkar and his fellow castemen proceed to Mahad to assert their right to draw water from the public tank there, not only will there be no opposition, but a cordial welcome will await them from the “Caste” Hindus. Such a consummation would go a long way to heal the wounds cruelly inflicted on their fellowmen.”¹

¹ : The Indian National Herald, dated 6th March 1928.

Mahad Satyagraha changed the social attitudes of some Caste Hindus. Following is one of the examples—

**“Do away with Castes
All Caste Dinner in Bombay**

An all caste dinner was held under the auspices of the Samaj-Samata-Sangh (Social-Equality-League) on the 5th instant in the Damodar Thakersey Hall, Parel.

About 150 persons of different castes including 50 so-called Untouchables attended the dinner. Mr. D. V. Naik, Editor of the *Brahman-Brahmanetar*, and vice-president of the League, welcomed the guests saying that such dinners were organised by the League to be away with caste barriers that separated and disintegrated the Indian nation in general and Hindu society in particular. It was only through free intercourse and inter dining, he added, that the evils of the caste system would be destroyed, and that a new society based on equal status would be developed. They had all gathered there, he proceeded, not on account of inevitable necessity (*Apad-Dharma*), but with a definite purpose and full knowledge and determination to break the intolerable shackles of the rigid system which disapproved and prohibited such sanctions of love and brotherhood.

The League under the able guidance of its learned President Dr. Ambedkar, he assured, the guests, would always welcome and help those who would, with unique courage in both hands, come forward to free themselves and the nation from the present inhuman caste-ridden society.

Mr. A. B. Kolhatkar, the Editor of the *Sandesh* eulogised the work of the League, pointing out the significance of such functions. He said the Hindu society was like a clock of sand where the Brahmins till then had the upper hand but now the time had come when they should ungrudgingly make room for the other castes and especially for the so-called Untouchables. He further believed that if the present abuses of all sorts—political, social and religious were to be eradicated, that could only be done through the instrumentality of a new Shivaji, to be born among the so-called Untouchables.

Mr. V. B. Karnik, the Secretary of the Bombay Maharashtra Youth Mandal drew attention to a resolution passed by it, aiming at the abolition of the iniquitous system of castes and the differences made on grounds of religion and sect by organising inter-caste dinners and encouraging inter-caste marriages and promised that the Mandal would always give its whole-hearted support to the League, which was already in the field in such national work.

Mr. M. R. Menon, said that he had come there to wish Godspeed to Dr. Ambedkar in the righteous work he had undertaken of procuring for the the so-called Untouchables the most elementary human right of drinking water from a public tank at Mahad.”¹

“In spite of Government Resolution, Untouchables were not allowed to draw water in 1932, the Bombay Government instituted a Committee consisting of Symington, I. C. S., and Zakeria Maniyar, to inquire into the condition of the Depressed Classes in the Nasik District. One of the chapters of the report revealed that in that District there were as many as eleven hundred District Local Board wells from which the Untouchables were not allowed to draw water in spite of the Government Resolution of 1923.”²

In the mean time a legal struggle in between Caste Hindus and Depressed Classes was going on in various Courts. Following is the abstract of these incidents.

“Appeal Heard in Thana District Court

Thana, March 20.

Mr. B. N. Sanjana, District Judge, Thana, heard to-day an appeal filed by Pandurang Waman dharap and others of Mahad against the judgement of Mr. Vaidya, Subordinate Judge, Mahad, dissolving an interim injunction granted by him previously against the Mahad Untouchables for bidding them from using the *Chawdar Tank*.

¹ : The Indian National Herald, dated 15th March 1928.

² : Keer, P. 197.

The District Judge passed orders granting a interim injunction restraining the respondents, from using the declaratory suit filed by the touchables in the Mahad Civil Court.”¹

“Kolaba, March 3.—The Bombay Chronicle of March 2, published the following :—“A meeting was held on Sunday, February 26, in Bombay, attended by about 2,000 people. It was resolved to re-launch the *Satyagraha* at Mahad. The *Satyagraha* Committee is meeting shortly and the exact date will be announced shortly.”²

“*Satyagraha* at Mahad : Re-starting of.....

Vide para 309. Kolaba, March 17.—There has been several reports lately that the Mahad *Satyagraha* is to be re-launched on March 22; but this has been personally denied by Dr. Ambedkar who has promised to give a fortnight notice before re-launching it.”³

“488. Vide para 52, Kolaba, March 24.—In the appeal against the order of the Sub-Judge, Mahad, regarding the Chawdar Tank, the District Court, Thana, has passed an order prohibiting an Untouchables from entering the Tank, pending the final decision of the suit regarding the Tank.”⁴

The Sub-Judge of Mahad Hon. V. R. Saraf gave judgement in favour of the respondents Dr. B. R. Ambedkar and others on 8th June 1931, since the appellants caste Hindus could not prove their ownership of the tank. Thus Chawdar Tank was declared as public and open to the Untouchables also.

The Caste Hindu Appellants preferred an appeal against the Judgement in the District Court of Thana. The Second Assistant Judge Hon. S. M. Kokani decided the case in favour of the Respondents Dr. B. R. Ambedkar and others on 30th January 1933.

¹ : The Indian National Herald, dated 22nd March 1928.

² : Bombay Secret Abstract dated 17th March 1928, para, 309.

³ : Bombay Secret Abstract dated 31st March 1928, para, 428.

⁴ : Bombay Secret Abstract dated 7th April 1928.

Thereafter the Caste Hindu Appellants again preferred an appeal in the High Court, Bombay. This case lingered for four years. Lastly Justice Broomfield and Justice Wadia rejected Caste Hindus' appeal on 17th March 1937 since they could not prove their ownership of land of Chawdar Tank.

The Judgement of the High Court, Bombay reads as under :

“APPEAL No. 462 OF 1933 FROM APPELLATE
DECREE

Narhari Damdoar Vaidya; and the others

(Original Plaintiffs Nos. 2 to 6).....Appellants.

versus

Dr. Bhimrao Ramji Ambedkar, Member of Joint Parliamentary Committee, London; and others.

(Original Defendants).....

Respondents.

Second Appeal against the decision of S. M. Kaikini, Esquire, Second Assistant Judge at Thana in Appeal No. 32 of 1931.

Mr. V. B. Virkar for the Appellants,

Counsel Mr. S. V. Gupte, with Mr. B. G. Modak for Respondent No. 1.

17th March 1937

Coram :—Broomfield N. J. and Wadia J. J.

Oral Judgement Per Broomfield N. J.:—

The appellants, on behalf of the caste Hindus of the town of Mahad, sued the respondents, who represented the so-called ‘Untouchables’ for a declaration that the Chawdar Tank near the town belongs to them and that they alone have a right to use it and the respondents are not entitled to use it, and for an injunction against the respondents not to use it. The claim to ownership is not now persisted in and it is conceded that, as found by the trial court, the tank belonged to Government under the provisions of Section 37 of the Land Revenue Code and has now vested in the Municipality of Mahad under Section 50 of the District

Municipalities Act. It is also conceded now that the caste Hindus are not entitled to exclusive user of the tank as against all the world, since Mohamedans may and do use it. It is contended nevertheless that the appellants have the right to use it themselves and to exclude the 'Untouchables' from it, and this right is said to be based on immemorial custom.

The Trial Judge found that the plaintiffs have proved a longstanding custom (he does not describe it as immemorial) of using the tank water to the exclusion of the 'Untouchables.' He held however that the custom conferred no legal right upon the plaintiffs because 'mere user of a public tank by one class and non-user by another would not clothe the class making the user with any legal rights or rights of ownership.' On appeal, the Assistant Judge confirmed the finding that the caste Hindus have not proved that they have any legal right to exclude the 'Untouchables.' He has relied to some extent on a judgement of Sir Sadashiv Ayar V. Vaithilinga, a case not reported apparently in the authorised reports but to be found in 1913 Mad. W. N. 247 and 18 Indian cases 979; but his main reason seems to be that he held that the custom is not shown to be immemorial.

The Chawdar Tank is a small lake or large pool; between four and five acres in extent, on the outskirts of the town. It is surrounded on all sides by municipal roads beyond which are houses occupied by caste Hindus (and a very few Mohamedans), and the owners of these houses also own in many cases strips of land on the edge of the tank, *ghats* or flights of steps to get to the water and the masonry embankments along the sides. There are no houses of 'Untouchables' anywhere near. It is not known how old the tank is, except that it is admittedly not less than 250 years old. There is no evidence as to its origin. It is not even clear that it is artificial. The Trial Judge took the view that it was 'a natural excavation in the bed of the earth, of course repaired and remodelled by human agency.' If this is so—and the point was not disputed in the argument before us—it is probably many centuries old. The water supply comes from the monsoon and a few natural springs. The population of the town Mahad is between seven and eight thousand, of whom less than 400 are 'Untouchables.' The Municipality was established in 1865, but

there is no evidence available, at any date on the record of this case, as to the early history of the town or as to the time when the side was first inhabited.

The Plaintiffs have examined a number of witnesses, many of them old inhabitants, whose evidence may be said to have established that within the period of living memory the tanks has been used exclusively by the Caste Hindus (and a few Mohamedans) and has never been used by the 'Untouchables'. It is in fact admitted that the latter never used it, before the year 1927, when a campaign against the doctrines of 'Untouchability' was carried out by defendant No. 1, and some of the 'Untouchables' went and drank water as a protest. They were assaulted and beaten by the caste Hindus and there were criminal prosecutions which led to the present suit. As there is no record of any attempt having been made by the 'Untouchables' to use the tank before that, there is no evidence of any positive acts of exclusion. What is provided is user by one party and absence of user by the other. This was due, no doubt to any accidental causes but, to the mutual acceptance of the doctrine of 'Untouchability' which until recent years was not openly challenged.

The learned Assistant Judge comments on the fact that there is no evidence of the exclusion of the 'Untouchables' in pre-British times, nothing to show that the exclusion of exclusive user was in force in the days of the Maratha rule or the Musalman rule. It is of course not always necessary to produce evidence going back beyond the memory of living persons. On proof of enjoyment for a period, even less than that, the Courts have frequently felt justified in holding, in the absence of evidence, to the contrary that a custom has existed from time immemorial. Nor, of course, is it necessary in case of this kind to have evidence of positive acts of exclusion of one party by the other. There could be no such evidence as long as the enjoyment of the caste Hindus was not challenged, and it would not be likely to be challenged as long as the doctrine of 'Untouchability' prevailed and was accepted. But a custom proved to have existed during the period of living memory can only be presumed to have existed from before the period of legal memory in case where conditions may be assumed to have been permanent and stable so that it is reasonable to infer

that what has happened during the period covered by the evidence has also happened from time immemorial. This is where the plaintiffs' case in our opinion breaks down. As long as conditions were at all similar, as long as the houses of the Caste Hindus have surrounded the tank, (which is not necessarily very long as the tank is on the outskirts of the town and the land around it would not likely be occupied until after considerable expansion of the original settlement) it may be safely presumed that the practice was the same as at present. It would not be safe to presume, however, that conditions have been similar for a period long enough to establish the alleged custom. The Konkan has had a chequered history, even in comparatively modern times, and to suppose that the Caste Hindus have been in a position to exercise exclusive control over this large natural reservoir situated as it is, from time immemorial, would be contrary to reasonable probability.

In this connection some of the observation of Sir Sadashiv Ayar in *Mariappa V. Vaithilinga* are very instructive. He cites a saying of Manu; 'Waters are pure as long as a cow goes to quench her thirst in and they have a good scent, colour and taste,' and he points out that the *Shastric* writings 'Make a distinction between rivers, tanks and other receptacle which are more easily contaminated and where purification by time, atmospheric conditions and movement of the water is much more difficult.' The learned Judge suggests that the dictates of the Hindu religion would not require any elaborate precautions against the pollution of water in a large open tank, and he was dealing with a tank in a village site considerably smaller than the Chawdar Tank at Mahad. The doctrine of 'Untouchability' therefore does not appear to go far enough to lend very much support to the appellants' case and it is doubtful whether any attempt would be made to secure exclusive user of the water until such time as the tank came to be surrounded by the houses of the caste Hindus.

This is the only case to which our attention has been drawn dealing with a claim to exclude 'Untouchables' from the use of a watering-place of this description. The temple-entry cases, e. g. *Anandrav N. Shankar*, (1883) I. L. R., 7 Bom. 323, and *Sankaralinga V. Rajeswara*, (1908) I. L. R., 31 Mad. 236, P. C,

are not really on all fours. In such case long practice acquiesced in by the other castes and communities may naturally give rise to a presumption of dedication to the exclusive use of the higher castes, and may throw upon the 'Untouchables' the burden of proving that they are among the people for whose worship a particular temple exists. No such presumption of a lawful origin of the custom can be said to arise here.

We therefore agree with the learned Assistant Judge that the appellants have not established the immemorial custom which they allege. Had they succeeded on this point it might have been necessary to consider whether the custom were unreasonable or contrary to public policy (though strictly speaking, it was not pleaded in the lower courts). It would certainly have been necessary to consider the legal effect of the vesting of the Chawdar Tank in the Municipality, and the question whether in any case the appellants could be granted any relief in this suit in which the legal owner is not a party. But as it is not necessary to decide these questions in the view we take of the case, and as they have not been very fully or effectively argued, we prefer to express no opinion.

Appeal dismissed with costs.

The seal of the
High Court at
Bombay.

By order of the Court
Sd/- R. S. Bavdekar,
Registrar
Sd/-

High Court Appellate
Side certified copy
Bombay.

For Deputy Registrar”
the 28th day of June 1960.¹

The words of Dr. B. R. Ambedkar that “Lost rights are never regained by begging, and by appeals to the conscience of the usurpers, but by relentless struggle” have been proved by Mahad *Satyagraha*.—Editors.

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¹ : Khairmode, Vol. 3, Pp. 258-263.

SECTION II

DR. AMBEDKAR—MAHATMA GANDHI MEETINGS
