



Pro-Poor Housing Rights for Slum Dwellers: The Case Against Evictions in Bangalore

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Master's Project

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I. Executive Summary

According to the Housing and Land Rights Network, from 2002-2012, around 2,676,652 people were victims of violations on housing and land rights in India.¹ Slum evictions demolish a dweller's shelter, and destroy the few belongings that dwellers have been able to acquire. They force slum dwellers to settle in other areas of the city, where housing conditions are worse and prospects for better jobs diminished. Thus, consequences of evictions can severely affect the livelihood of already impoverished and vulnerable people. Not surprisingly, the principal concern of slum dwellers who lack formal housing rights, is the threat of eviction.

This Master's Project aims to contribute to the body of policy-oriented research that focuses on housing rights and the protection from eviction of slum dwellers in Bangalore. The study evaluates the political economy context and identifies shortcomings of slum policy and 'pro-poor' efforts in relation to the protection of slum dwellers from eviction, focusing on the ten-year period of 2002-2012.

The analysis reveals a significant gap between housing policy and housing needs, as those who need security of tenure the most, are generally unable to afford the costs of affordable housing alternatives offered by the government. This vulnerable segment of the population is also highly susceptible to evictions, which further threatens the stability of their livelihood. Perversely, even policies crafted at the central and state levels to address the vulnerabilities of the poorest city dwellers are not being implemented in a comprehensive, transparent and efficient manner by the respective public institutions. Additionally, standards and regulations tend to facilitate eviction processes and provide little protection from eviction or housing alternatives for unlawful dwellers.

The gap between policy and the needs of the poor is further aggravated by the dwellers' lack of information on their rights and the limited influence that vulnerable slum dwellers have on shaping reform. NGOs and other civil society actors² have been working to advocate on behalf of the poor and advance their right to housing. Nevertheless, collective action problems and limited resources keep them from increasing the impact of their efforts.

The research results of this study have led to the following recommendations:

1. NGOs should **build the capacity** of slum leaders and any emergent CBOs to pursue housing rights and protect themselves from eviction. CBOs and slum leaders should be trained on notification processes and other related tasks that can help advance the community's agenda.
2. NGOs should **reprioritize** their work, increasing investment of resources in a few specific key areas of work to maximize impact. By implementing recommendation 1, CBOs will take some responsibility away from NGOs, allowing NGOs to focus more on implementing specific and complex strategies. Some of these include: i) raising awareness nationally and globally on the vulnerability of the poorest slum dwellers, ii) seeking the courts help for the advancement of housing rights as well as safety nets around eviction, and iii) advocating at the central and state levels for the further development and actual implementation of 'pro-poor' policies, including schemes on night shelters, temporary housing, and property rights.

¹ "Housing and Land Rights Network. Period 2002-2012." *Housing and Land Rights Violation Database*.

² Civil society actors include Community Based Organizations, slum leaders, and others.

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Finally, I would like to dedicate this product in memory of Jose Edgardo Campos, former manager of the World Bank Institute's Leadership and Governance Practice, a great mentor and an inspiration for many of us working on governance and development around the world.

III. List of Acronyms Used

AVAS	Association for Voluntary Action and Service
BBMP	Greater Bangalore Municipal Corporation
BDA	Bangalore Development Authority
BSUP	Basic Services for the Urban Poor Scheme
CBO	Community Based Organization
DMA	Directorate of Municipal Administration
HLRN	Housing and Land Rights Network
HRLN	Human Rights Law Network
JNNURM	Jawaharlal Nehru National Urban Renewal Mission
KSDB	Karnataka Slum Development Board
NGO	Non-Governmental Organization
OBC	Other Backward Classes
PPP	Public-Private Partnerships
PUCL	People's Union for Civil Liberties
RAY	Rajiv Awas Yojana (Scheme)
SC	Schedule Caste
SPARCS	The Society for the Promotion of Area Resource Centres
ST	Schedule Tribe
UN	The United Nations
ULBs	Urban Local Bodies
WB	The World Bank

IV. Introduction

How can slum dwellers be protected from eviction in Bangalore?

Concentration of economic activity has become the *new normal* in this increasingly globalized world.³ The potential benefits of agglomeration incentivize many from different socio-economic backgrounds to move to cities. As a result, approximately 7 million people around the world migrate to cities every year, hoping to increase their pool of economic opportunities and improve their lives.⁴ The greatest volume of this migratory wave occurs in developing countries, where many migrate from low-income backgrounds, with few or no belongings.

This trend has led to an increase in demand for housing and other services in urban localities. At one end of the spectrum, private investors and the non-poor population of the city demand land and infrastructure from the government, hoping to promote private investments and increase growth. At the other end, lower income segments of the city demand housing and access to basic services. These competing forces have led to a policy challenge where supply often fails to meet demands. While providing basic services to the poor can have positive upward mobility effects, few countries have been able to craft and implement policies that effectively address poverty in urban areas.⁵ India, one of the fastest growing economies in the world, is no exception to this pattern.

The country's impressive growth has not been as effective in alleviating the needs of the poor. India is still battling high poverty levels, with around 22% of its total population living below the poverty line.⁶ According to Census 2011 data⁷, during the last decade, 20.5 million Indians migrated from rural to urban settings.⁸ Today, the population that lives in urban cities amounts to approximately 31% of its total population, a percentage that is expected to rise.⁹ Many of these recent migrants find that they can only afford to live in city slums, which remain disconnected from the channels that can provide better opportunities and help improve their livelihoods. As a result, many low-income Indians who migrate to cities find themselves in worsening living circumstances, as well as social and economic isolation. Trapped under these conditions, slum dwellers are often left defenseless and highly vulnerable to changes in their surroundings. Given the increase in demand for land, the threat of eviction is one such change that continues to occur particularly in big cities like Bangalore, and that can immensely affect the livelihood of a slum dweller.

According to the Housing and Land Rights Network—an NGO with a global database on housing violations around the world— from 2002-2012, around 2,676,652 people were victims of violations on housing and land rights in India.¹⁰ Slum dwellers in Bangalore also continue to experience evictions, especially dwellers who are not formally recognized by the government. Results from the *Pathways to Prosperity Study* indicate that 61% of dwellers from the most deprived slums are evicted at least once every five years.¹¹ These evictions take place with little consideration for the dweller's circumstances,

³ *World Development Report*. 2009. The World Bank. Chapter. 5.

⁴ Restrepo, Paula. 2010. "Moving In-Selling Out: The Outcomes of Slum Rehabilitation in Mumbai." *International Conference on Applied Economics*.

⁵ *Ibid.*

⁶ The poverty line for 2011-2012 as stipulated by the Planning Commission of India is Rs.816 monthly per capita in rural areas and Rs. 1,000 in urban areas. Note, however, that the reasonableness of these figures in both (rural and urban) contexts is highly contested.

Sources: "Press Note on Poverty Estimates, 2011-12." July 2013. *Government of India Planning Commission*.; Sinha, Prabhakar. February 20, 2014. "McKinsey pegs poverty line at Rs 1,336 per month." *The Times of India*.

⁷ Note: Census 2011 is the most recent census data available in India.

⁸ "Census of India." 2011. *Government of India*.

⁹ "Urban Development: Twelfth Five Year Plan (2012-2017)." 2013. *Government of India*.

¹⁰ "Housing and Land Rights Network. Period 2002-2012." *Housing and Land Rights Violation Database*.

¹¹ Krishna, Anirudh. *Pathways to Prosperity Study*. Jana Urban Foundation, Jana Urban Space Foundation and the Sanford School of Public Policy, Duke University.

the alternative accommodations provided by the city, or the time period provided to help dwellers plan a move. For example, in January of 2013, the government demolished over 1,500 homes in the city, effectively evicting 5,000 slum dwellers from the Koramangala neighborhood to enable new commercial developments to take place in the area.¹² The government informed the evictees of the demolition 48 hours before it happened.

Given the importance of this development challenge, this Master's project aims to contribute to the body of policy-oriented research that focuses on housing rights and the protection from eviction of slum dwellers in Bangalore. In order to delve deeper into this policy topic, the study evaluates the political economy context and identifies shortcomings of slum policy and 'pro-poor' efforts in relation to the protection from eviction, focusing on the ten-year period of 2002-2012. A political economy analysis such as this, studies the intersection between politics and economics, evaluating a development context from the viewpoint of *who gets what, when and how* (the politics dimension¹³), as well as from the perspective of supply and demand of goods and services (the economics dimension).¹⁴ Furthermore, although there are many different definitions of what "pro-poor" means¹⁵, for the purpose of this study, I define 'pro-poor' as strategies tailored to help improve the life of the poorest of the poor, reducing poverty and inequality levels between socio-economic groups as well as within the poor themselves.¹⁶

Given the conditions that prevail in the current context, the study presents two potential strategies for slum residents and their representatives¹⁷ to further protect and advance their rights to housing. The study opens with a literature review section that describes the research developed on the topic, followed by a section on the methodology used for this research. Section VII presents a stakeholder analysis on slum evictions in Bangalore, followed by a description of the legal context in India, and a comparative case on housing rights in South Africa. Section X presents potential strategies to help minimize slum dweller's vulnerability to evictions, followed by a concluding section and appendices.

V. Literature Review

Housing rights are a salient concern for slum dwellers, most of whom are very familiar with stories of evictions and costly rents. Still, identifying the most appropriate type of housing right to provide slum dwellers remains challenging, especially in urban areas where land is scarce and costly. Scholars such as Gilbert, Payne and, Fernandez, argue that legal titles are not necessarily the only potential solution to the problem of housing.¹⁸ Other scholars, however, claim that providing land rights is essential to protect dwellers from eviction and provide them with development opportunities. For example, De Soto argues that property rights provide low-income families with formal opportunities to borrow money and invest

¹² "Governance by Denial: Forced Eviction and Demolition of Homes in Ejipura/Koramangala, Bangalore." 2013. *Housing and Land Rights Network (HLRN) and the People's Union for Civil Liberties (PUCL)*.

¹³ Lasswell, Harold. 1936. *Politics: Who Gets What, When, and How*. New York: McGraw-Hill.

¹⁴ Corduneanu-Huci, Cristina; Hamilton, Alexander; Ferrer, Issel Masses. 2013. *Understanding Policy Change: How to Apply Political Economy Concepts in Practice*. Washington, DC: World Bank.

¹⁵ Lopez, Humberto. "Pro-poor growth: a review of what we know (and of what we don't)" Draft Document. *The World Bank*.; Pogge, Thomas. 2010. *Politics as Usual: What Lies Behind the Pro-Poor Rhetoric*. Politic Press.

¹⁶ As such, these policies should recognized that 'poor' is not a one box category. Not all poor people have the same problems and needs. Thus, a one-size-fits all solution, ignores the multiple poverty dimensions and will thus fail at helping the poor socially mobilize.

¹⁷ Typically, slum dweller representatives come from NGOs or CBOs with the objective to help slum dwellers advocate for their rights in India.

¹⁸ Fernandes, Edésio and Ann Varley. 1998. *Illegal Cities: Law and Urban Change in Developing Countries*. London: Zed Books.;

Gilbert, Alan. 2001. "On the Mystery of Capital and the Myths of Hernando de Soto: What Difference does Legal Title Make?"; Payne, Geoffrey and Alain Durand-Lasserve. 2012. "Holding On: Security of Tenure - Types, Policies, Practices and Challenges." *Prepared for the Special Rapporteur on the Right to Adequate Housing*.

in enterprises that generate them capital and improve their lives.¹⁹ As described later in this paper, some of these findings have influenced India's policies in regards to the provision of housing rights.

Given the relevance of the housing rights debate, scholars have also tested some of these ideas in the context of India. For example, Mahadevia evaluated the potential effects of new policies that aim to increase the provision of property rights to slum dwellers in the Indian cities of Ahmedabad and Surat.²⁰ The findings of this study indicate that when slum dwellers have *de facto*²¹ tenure rights and the government provides slum rehabilitation services, no significant relationship is found between formal legal tenure rights and economic improvements of slum dwellers.²²

Furthermore, it should be acknowledged that the need for specific types of tenure security (as well as other services) can change, depending on the characteristics of the specific poor populations evaluated. For instance, Krishna, Sriram and Prakash describe the results of the *Pathways to Prosperity Study*, which has surveyed over 2,000 slum households in Bangalore. The results demonstrate the heterogeneity between slums, and the divergent needs and vulnerabilities between them. Using a combination of research methods—including satellite images, household interviews and slum visits—the authors evaluate the differences between the best-off slums and the worst-off slums.²³ The results indicate that, while most slum dwellers remain disconnected from the economic opportunities that a city provides, slum conditions and socio-economic statuses differ widely and significantly between slum types. Some of these differences include the assets that slum dwellers have, the sources of information they use and the types of connections they acquire.

Nevertheless, while the needs of tenure security might change depending on the slum population of study, at the bare minimum, all slum dwellers want shelter and the protection from the threat of eviction. Two main research bodies dominate on this regard; some scholars assess what the government is doing to improve the life of slum dwellers and protect them from evictions, while other researchers evaluate civil society efforts in helping slum dwellers advocate for their rights to housing.

On the role of government, Aranya describes how the increasing emphasis on liberalization policies of the 1990's led to the promotion of foreign investments and allowed market-led economies to flourish in Bangalore.²⁴ As a result, Bangalore experienced an increase from 13 information technology (IT) firms in the early 1990's, to 1154 IT firms in 2003.²⁵ While this impressive growth did allow Bangalore to positively affect the middle and higher income classes that could take advantage of these opportunities, Aranya argues that the reverse happened with the lower-income population. Moreover, Kranthi and Rao assess the reasons for slum evictions and the consequences for slum dwellers in Hyderabad, India. Similar to Aranya's observations, the authors argue that most evictions happened by force, to make way for development projects and that, when the government did provide alternative housing, it rarely fulfilled the needs of slum dwellers.²⁶

Along the lines of this argument, Benjamin describes how the composition of the government in Bangalore is structured to be most responsive to big commercial concerns, and often ignores the poor,

¹⁹ De Soto, Hernando. 2000. *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. Basic Books.

²⁰ This study took place from 2008 to 2010.

²¹ *De facto* refers to the norms that are implemented in practice even though they do not originate from a legal obligation.

²² Mahadevia, Darshini. 2011. "Tenure Security and Urban Social Protection: India." *Center for Social Protection Report 5*.

²³ Krishna, Anirudh, M.S. Sriram and Purnima Prakash. 2013. "Slum Types and Adaptation Strategies: Identifying Policy-Relevant Differences in Bangalore." 2013. *With the Indian Institute of Management, Bangalore*. Presented at an international workshop at the University of Manchester UK on "Living in Low-income Urban Settlements in an Era of Climate Change."

²⁴ Aranya, Rolee. 2008. "Location theory in reverse? Location for global production in the IT industry of Bangalore." *Environment and Planning*. Volume 40. Pgs. 446-463.

²⁵ *Ibid*. Pg. 448.

²⁶ Kranthi, Natraj and Kavita Daryani Rao. 2010. "Security of Tenure and Protection Against Evictions of Slums Dwellers: A Case of Hyderabad." *Institute of Town Planners, India Journal*.

who are largely affected by the system and its policies, particularly in regards to security of tenure.²⁷ Furthermore, Kamath examines how the national Basic Services for the Urban Poor (BSUP) program²⁸, which aims to improve the conditions of the urban poor, has worked in practice in the city of Bangalore.²⁹ Kamath evaluates housing projects for slum residents executed by BBMP, one of the two local agencies in charge of implementing the scheme in Bangalore. As described by Kamath, the difference between policy and practice are profound in the two cases she studies. Her findings indicate inefficient government practices, exclusion of slum groups in the process, higher than stipulated costs incurred by slum dwellers, and corruption.

Benjamin Marx et al.—who study the relationship between slums, urban growth, and economic growth—argue that even though urban slums are closer to cities, the poor who live in slums remain marginalized from the services and opportunities that are prominent in cities and that are needed to improve human capital and enable social mobility.³⁰ This situation resembles that of a ‘poverty trap’, where slums become non-temporary premises with limited prospects for growth. Marx et al. claim that the ‘policy trap’ further exacerbates this stagnation. They argue that the public sector has not invested enough to understand the magnitude of slum challenges, and provide a holistic set of needed services (such as property rights, education, health, and infrastructure) extensively and widely across the slums. As a result, the ‘poverty trap’ remains. The scholars describe the following as specific policy factors that lead to, and foment this ‘poverty trap’: lack of property rights for slum dwellers keep them from investing in the places they live and accessing credit, high rent payments hinders the chances of slum dwellers to save and invest, governance gaps³¹ lead to the inefficient control and use of land, and the perception that improving slum conditions leads to higher migration prevents many from supporting significant spending on rehabilitation programs.³²

On the role of civil society, many scholars argue that collective action and civic engagement is necessary for achieving certain public goods, the discussion of how best to arrive at effective collective action remains vibrant.³³ Ayyar and Khandare describe how low-income populations create networks based not only on their caste but also other background characteristics (location of origin, language, etc.).³⁴ Such groups are strong and effective at helping each other through tough times, especially with connections and jobs, but can also exclude those who are not similar to them. This exclusion limits their ability to become an even stronger force and expand their reach. Furthermore, Somik et al. studied the level of mobilization and participation among different groups, with and without security of tenure. The scholars find that groups with security of tenure are more willing and able to collectively mobilize, even in cases where the groups are diverse. Somik et al. also find that the poorest of the poor, who lack security of tenure, have not developed trust with other dwellers living in their proximity, and this hurts their capacity to effectively mobilize.³⁵

²⁷ Benjamin, Solomon. 2000. “Governance, economic settings and poverty in Bangalore.” *Environment and Urbanization*. Vol. 11 No. 1.

²⁸ BSUP is a sub-mission of the JNNURM scheme, to be described later on in this paper.

²⁹ Kamath, Lalitha. 2012. “New Policy Paradigms and Actual Practices in Slum Housing.” *Review of Urban Affairs, Economic and Political Weekly*. Vol. XLVII No. 47 & 48. ;

Mahadevia, Darshini. 2011. “Tenure Security and Urban Social Protection: India.” *Center for Social Protection Report 5*.

³⁰ Marx, Benjamin, Thomas Stoker, and Tavneet Suri. 2013. “The Economics of Slums in the Developing World.” *Journal of Economic Perspectives*. Volume 27. Pgs. 187–210.

³¹ Examples of governance gaps include the inability of governments to effectively address the problem of land control by few, or the illegal provision of vacant land permits.

³² Ibid

³³ Holston, James. 1998. “Spaces of Insurgent Citizenship.” *In Making the invisible visible: A multicultural planning history*. Berkeley: University of California Press.;

Ostrom, Eleonor. 2010. “Collective Action and the Evolution of Social Norms.” *The Journal of Economic Perspectives*. Vol.14 No. 3. ;

Corduneanu-Huci, Cristina; Hamilton, Alexander; Ferrer, Issel Masses. 2013. *Understanding Policy Change: How to Apply Political Economy Concepts in Practice*. Washington, DC: World Bank.

³⁴ Ayyar, Varsha and Lalit Khandare. 2007. *Social Network in Slum and Rehabilitation Sites: A Study in Mumbai (India)*.

³⁵ Somik V L, et al. 2002. “Tenure, Diversity and Commitment: Community Participation for Urban Service Provision.” *World Bank Policy Research Working Paper 2862*.

Although participation within poor communities might be weak, NGOs and civic engagement have increased in the last couple of years.³⁶ On the one hand, scholars such as Harris argue – based on his evaluations in Chennai – that NGOs do not necessarily represent and/or empower the poorest of the poor, but rather tend to focus on advocating the interests of the middle-income segments.³⁷ On the other hand, some scholars argue that NGO efforts to help the poor have become greater and more innovative. For example, Ramanath illustrates how the 1981 eviction and demolition of pavement dwellers in Mumbai led to a massive coalition effort by the People’s Union for Civil Liberties (PUCL) to seek justice through the High Court of Mumbai to halt the demolitions.³⁸ Similarly, Subbaraman et al. also analyze how evictions of ‘illegal’ residents have led to a strong civil society in Mumbai.³⁹ The escalation of this mobilization⁴⁰ forced the government to negotiate and work with civil society organizations to find alternative shelter for evictees who did not have anywhere to go.⁴¹

Moreover, and as stated by Rajamani, corruption and inefficiencies in the executive branch have encouraged the poor to explore other advocacy strategies such as seeking the involvement of the courts to advocate for the protection of their rights. Public interest litigation (PIL), a tactic of last resort, has become a strategy for many who are desperate and want to defend their rights.⁴² However, the results of these efforts in India are mixed. Krishnan’s forthcoming study, for instance, discusses how public interest litigation has evolved in four states of India. Krishnan also describes the struggles faced when helping the poor access their basic needs through the courts and how NGOs often form part of this movement, trying to secure the courts help in protecting the rights to housing.⁴³ Gauri also assesses the role of PILs in India, by describing and evaluating scholars’ concern in regards to the courts’ decisions and responsibility to protect people’s right.⁴⁴ Furthermore, Gauri analyses a compilation of India’s Supreme Court PIL cases from 1997-2007 and observes that many PIL cases are brought by advantaged populations and that in fundamental rights cases, the advantaged populations are now more likely to win cases.⁴⁵

While scholars have analyzed the complex topic of slum eviction from different angles, few have been able to evaluate the interactions and dynamics of the context in a holistic matter, especially in regards to the city of Bangalore. Given the gaps in understanding the opportunities and limitations of housing rights, and more specifically of protection from eviction for slum dwellers, this paper will provide an analysis of the current policy context in Bangalore.

³⁶ Harris, John. 2007. “Antinomies of Empowerment: Observations on Civil Society, Politics, and Urban Governance in India.” *Economic and Political Weekly*. Vol. 42, No. 26. Pgs. 2716-2724.

³⁷ Ibid.

³⁸ Ramanath, Ramya. 2005. “From Conflict to Collaboration: Nongovernmental Organizations and their Negotiations for Local Control of Slum and Squatter Housing in Mumbai, India.” Dissertation.

³⁹ Subbaraman, Ramnath et al. 2012. “Off the map: the health and social implications of being a non-notified slum in India.” *Environment and Urbanization*. Vol. 24: 643.

⁴⁰ To be further analyzed in the sections below.

⁴¹ Ibid.

⁴² Rajamani, Lavanya. 2007. “Public Interest Environmental Litigation in India: Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability.” *Journal of Environmental Law*. Vol 19. No 3. Pgs. 293–321.

⁴³ Krishnan, J. et al. 2014. “Grappling at the Grassroots: Litigant-Efforts to Access Economic and Social Rights in India.” *Harvard Human Rights Journal*. Vol. 27.

⁴⁴ Gauri, Varun. 2009. “Public Interest Litigation in India: Overreaching or Overachieving?” *The World Bank Policy Research Working Paper Series*. N. 5109.

⁴⁵ Ibid.

VI. Methodology of Research

To conduct this research, I used a combination of qualitative and quantitative analysis on slum evictions in Bangalore, from 2002 to 2012. The analysis focuses on the shortcomings of current security of tenure policies and fair eviction processes. Moreover, it does not assess housing programs that might be under development by actors independent from the government.

A political economy analysis is thus developed to explain the problem of slum evictions by reflecting on the actors involved, their stakes, powers/resources, and the relationship they have with each other around this specific policy issue.⁴⁶ This type of evaluation method can help understand the critical issues surrounding policy design and implementation, why shortcomings arise and what opportunities for improvement can be explored.

The methodology aims to capture different types of information from several tools and sources, including:

1. Neighborhood and Household Survey Instruments and Field Notes (quantitative and qualitative): the analysis uses data of the *Pathways to Prosperity Study*⁴⁷ – an effort between Duke University, the Jana Urban Foundation and the Jana Urban Space Foundation – which studies social mobility in the slums of Bangalore.⁴⁸ The study's research team has identified several categories of slums that have significant socio-economic differences, and has collected and analyzed data of the two extremes.⁴⁹ Some of this study's data is used to identify the variations in perceptions and the needs of different slum dwellers in regards to security of tenure and the threat of eviction.

Data used from this study consists of household and neighborhood surveys from the “best-off” slums, and the “worst-off” slums of the city, as well as notes written to account for additional field observations. The “best-off” slums belong to the category of middle/low-income slums that have been formally recognized (or notified) by the government, and they are representative of the governments' *notified*⁵⁰ slum category. The “worst-off” slums belong to the category of new migrants, and are generally regarded as unlawful occupants, but are not fully representative of all *unrecognized* slums, just the ones in the worst conditions. For the purpose of this study, “best-off” slums are referred to as *fourth-generation* slums and the “worst-off” as *first-generation* slums. Data collection of the remaining slum categories identified by the *Pathways to Prosperity Study* is ongoing, and thus, will not be utilized.

⁴⁶ Stakeholders include national, state, and local level government bodies working on this issue, as well as the courts, private sector, slum dwellers, community based organizations, media and civil society organizations relevant to the topic.

⁴⁷ More information on the research methodology can be found in: Anirudh, M.S. Sriram and Purnima Prakash. 2013. “Slum Types and Adaptation Strategies: Identifying Policy-Relevant Differences in Bangalore.” 2013. *With the Indian Institute of Management, Bangalore*. Presented at an international workshop at the University of Manchester UK on “Living in Low-income Urban Settlements in an Era of Climate Change.”

⁴⁸ Krishna, Anirudh. *Pathways to Prosperity Study*. Jana Urban Foundation, Jana Urban Space Foundation and the Sanford School of Public Policy, Duke University.

⁴⁹ Krishna, Anirudh, M.S. Sriram and Purnima Prakash. 2013. “Slum Types and Adaptation Strategies: Identifying Policy-Relevant Differences in Bangalore.” 2013. *With the Indian Institute of Management, Bangalore*. Presented at an international workshop at the University of Manchester UK on “Living in Low-income Urban Settlements in an Era of Climate Change.” Pp. 7.

⁵⁰ Notified slums have been formally recognized by the government.

Slum Type	Neighborhood Survey Sample Size ⁵¹	Household Survey Sample Size
First-Generation Slums ⁵²	12	1365
Fourth-Generation Slums ⁵³	23	631

2. Survey Instruments of Public and Non-Public Officials: to better understand the policies and procedures implemented by the state and local government bodies, and identify the strengths, as well as the limitations within them. I have conducted interviews with public officials, NGO representatives, communication experts, scholars and slum dwellers.

Informal and formal interviewees include representatives from:

- ActionAid
- Directorate of Municipal Administration
- Documentary film
- Forum of Urban Deprived Communities for Social Justice
- Greater Bangalore Municipal Corporation
- Human Rights Law Network
- Karnataka Slum Development Board
- Landesa
- Legal Service Clinic, National Law School of India
- Socio-Economic Rights Institute of South Africa
- Peoples' Union for Civil Liberties
- SPARCS/National Federation of Slum Dwellers

3. Legal Analysis: to comprehend the role that law and collective mobilization can play in helping or hindering effective implementation of slum development efforts. This includes an analysis of the rights of slum dwellers in accordance with the law, as well as the court decisions on the matter. Public Interest Litigations (PILs) have been drawn from online databases of the Supreme Court, the High Court of Karnataka and Manupatra, using word searches such as “eviction” “slum eviction” “housing right” and “right to life”, from 1985 to 2012.
4. Literature review: to describe scholars’ findings and identify information gaps on the topic.
5. Comparative Research: to identify other cities and evaluate what they have done to protect slum residents from eviction and whether these strategies can be helpful in the context of Bangalore. Some of this research will include comparative community organizing litigation that aims to achieve similar goals, such as housing collective litigation efforts executed in South Africa.

⁵¹ For each neighborhood survey conducted, an average of 3-6 residents were consulted (including slum leaders).

⁵² Please note that the results of this data may differ from the original results as presented in “Slum Types and Adaptation Strategies: Identifying Policy-Relevant Differences in Bangalore.” This is due that the non-notified slum surveyed data was removed for the purpose of this analysis.

⁵³ The *Pathways to Prosperity* research team refers to these slums as “blue polygon” due to the blue plastic sheets used to help established the shelter.

VII. Stakeholder Analysis of Slum Evictions in Bangalore

To better understand the overall context of this development challenge, I have divided the analysis into sub-sections describing each relevant stakeholder, their incentives, resources, and their relationship with other actors that have stakes on slum poverty alleviation efforts and slum evictions. Note, that only the most actively engaged actors are discussed below. These include public actors at the central, state and municipal level, NGOs, slum dwellers, private sector, and the media.

A. National Government Actors

Service delivery can be just that – or it can be pragmatic solidarity, linked to the broader goals of equality and justice for the poor.⁵⁴

In 1947, when India became an independent nation, only a seventh of the population lived in cities. As a result, the newly independent nation focused its efforts on crafting and implementing policies to address rural poverty. However, growing investment in cities, combined with liberalization policies and increasing migration to these areas, led to a shift in policy focus from rural to urban development strategies.⁵⁵

More than 93 million Indians live in slums and it is estimated that half of India slums have not been declared as such by the government.⁵⁶ Mckinsey indicates that out of 25 million urban households (35% of all urban households) who cannot afford housing costs in urban areas of India, two thirds end up living in slums.⁵⁷ Thus, low-income migrants often find that they can only afford to live in slums, which are unsafe, susceptible to evictions and can provide limited opportunities to better their livelihoods. Furthermore, estimates indicate that by 2030, 70% of new jobs in India will be generated in cities.⁵⁸ Estimates also indicate that by 2030 the expected urban population will reach between 575 and 590 million (as opposed to 290 million in 2001). Consequently, it is crucial for the state to effectively address current challenges and prepare for future ones in cities, if it is to promote development and enable better opportunities to reach the poor.⁵⁹

To address the challenge of urban poverty, the India Ministry of Housing and Urban Poverty Alleviation's 11th five-year housing plan of 2007 (as well as the 12th Plan that began in 2013) has called for an increase in efforts that reduce poverty in slums and promote inclusive and equitable growth. Specifically, the national government has framed several schemes⁶⁰ that aim to: i) develop rural areas to decrease incentives for migration, ii) improve the conditions of slums and, iii) prevent new ones from originating. By means of these schemes, the national government has also called upon its states to work on improving slums by developing the infrastructure and providing basic services to slum dwellers. The schemes do not only require a closer focus on slum rehabilitation, but also emphasize the importance of community participation in the process, and the need for greater involvement from local bodies and municipalities.

⁵⁴ Farmer, Paul. 2003. "Rethinking Health and Human Rights: Time for a Paradigm Shift" in *Pathologies of Power: Health, Human Rights and the New War on the Poor*. University of California Press. Pp. 227, par. 3.

⁵⁵ "Housing and Urban Policy in India." *Ministry of Housing and Poverty Alleviation*.

⁵⁶ Subbaraman, Ramnath et al. 2012. "Off the map: the health and social implications of being a non-notified slum in India." *Environment and Urbanization*. Vol. 24: 643.

⁵⁷ "India's Urban Awakening: Building Inclusive Cities, Sustaining Economic Growth." 2010. *Mckinsey Global Institute*.

⁵⁸ *Ibid.* Pg. 13.

⁵⁹ *Ibid.* Pg. 17;

"India: Urban Poverty Report 2009." 2009. *UNDP Factsheet*.

⁶⁰ Schemes refer to large-scale policy plans for which national budgetary allocations are made.

Some of the relevant national schemes developed by the Ministry of Urban Development of India⁶¹ to address this challenge include the Jawaharlal Nehru National Urban Renewal Mission (JNNURM), its sub-mission on Basic Services to the Urban Poor (BSUP), and the Rajiv Awas Yojana (RAY).

National Policy to Address Urban Development Challenges: The Jawaharlal Nehru National Urban Renewal Mission (JNNURM)

The JNNURM scheme (2005-2014) aims to provide the infrastructure needed to facilitate growth and sustainable development in 63 cities of India.⁶² The scheme mandates the state to repeal the Urban Land (Ceiling and Regulatory) Act of 1976, and enact a new law on community participation and reform rent controls.⁶³ Under the scheme, municipalities are responsible for duties that include the provision of urban services to the poor, the implementation of e-governance systems and GIS programs that map urban development in all localities.⁶⁴ JNNURM also encourages the increase of Public-Private Partnerships (PPP) projects and the earmarking of 20-25 percent of land to be used for cross-subsidized housing projects for the poor and economically weaker sections⁶⁵ (EWS).⁶⁶ Among the expected outcomes of JNNURM, some of the most relevant for this discussion include achieving “universal access to minimum level of services” and having “transparency and accountability in urban service delivery and management.”⁶⁷

The JNNURM scheme has devoted 40% of the scheme’s funds⁶⁸ to improve and rehabilitate slums, and build affordable⁶⁹ housing for the poor. The objectives related to the urban poor are housed and administered by the Ministry of Housing and Poverty Alleviation, under the sub-mission of Basic Services to the Urban Poor (BSUP). The main objective of BSUP is to create an integrated approach to slum development by improving the infrastructure and conditions of slums in Indian cities.⁷⁰

In order to apply for BSUP funds, the following steps must be executed: i) a City Development Plan (CDP) is developed by the city, stipulating the vision, policies and programs to be executed in the corresponding city, ii) Detailed Project Reports (DPRs) are prepared by the Urban Local Bodies (ULBs) and parastatal agencies, describing the project proposals to be funded by the scheme⁷¹, and iii) a timeline for the implementation of the development agenda.⁷² Funds for projects are administered through the State Level Nodal Agency (SLNA)⁷³ and shall be complemented with state and local funding.⁷⁴ While the scheme allocates a significant amount of money to improve conditions of slums, the guidelines on housing under the sub-mission indicate that “housing should not be provided free to the beneficiaries by the State Government. A minimum of 12% beneficiary contribution should be stipulated, which in the case of SC/ST/BC/OBC/PH and other weaker sections shall be 10%.”⁷⁵ This presents a problem for the very poor who, as described later on, cannot cover such costs.

⁶¹ This was done in collaboration with the Ministry of Housing and Poverty Alleviation.

⁶² “Jawaharlal Nehru National Urban Renewal Mission: Overview.” *Government of India*.

⁶³ “Jawaharlal Nehru National Urban Renewal Mission.” 2010. *Government of India*.

⁶⁴ *Ibid*.

⁶⁵ The term EWS refers to people living below the poverty line.

⁶⁶ “Jawaharlal Nehru National Urban Renewal Mission.” 2010. *Government of India*. Pg.10.

⁶⁷ *Ibid*.

⁶⁸ Total central funds allocated by the scheme are around 66,085 crore for the first seven years (around 11.03 billion USD), as stated by the *Twelfth Five Year Plan (2012–2017)* of the Planning Commission of the Government of India.

⁶⁹ As the guidelines for BSUP indicate on beneficiary contribution matters.

⁷⁰ “Jawaharlal Nehru National Urban Renewal Mission: Overview.” *Government of India*. Pg. 6.

⁷¹ The ULBs and parastatal agencies requesting BSUP funds, must also demonstrate that the DPRs are in line with the goals and rules of the scheme.

⁷² “Jawaharlal Nehru National Urban Renewal Mission.” 2010. *Government of India*.

⁷³ In this case, the Nodal Agency would be the Directorate of the Municipal Administration (DMA) of Karnataka.

⁷⁴ *Ibid*.

⁷⁵ “Guidelines for the Projects on Basic Services to the Poor (BSUP), to be Taken up Under Jawaharlal Nehru National Urban Renewal Mission (JNNURM).” *Government of India*. Pp 10.

*National Policy to Address Slum Development: Rajiv Awas Yojana (RAY)*⁷⁶

The RAY scheme (2013-2022) was launched to continue the vision of “a ‘Slum Free India’ with inclusive and equitable cities in which every citizen has access to basic civic infrastructure, social amenities and decent shelter.”⁷⁷ Under its mission, RAY aims to formalize all slums (notified and non-notified), help them get access to basic services, and plan for affordable housing programs accessible to the poor. The city, thus, has to write an action plan⁷⁸ that defines a strategy on how tackle the problem focusing on the rehabilitation component of existing slums, and the preventive mechanisms for controlling the growth of future slums. Under the rehabilitation component, emphasis is given to the mapping and analysis of circumstances as well as needs of each slum. In the case of containing future slum growth, objectives entail evaluating existing and potential housing shortage and devising alternatives to create supply solutions to house the poor.⁷⁹

RAY is also highly focused on identifying ways to give property rights to slum dwellers. In-situ rehabilitation is encouraged to avoid socio and/or economic damages to the households. Furthermore, community participation is also underscored as a key element through the process of redevelopment and/or rehabilitation of slums. Beneficiary contribution continues to be regarded as necessary, with 10% of cost for SC/ST/OBC⁸⁰ and other weaker sections, and 12% for other *vulnerable* sections of the population. Although this amount varies depending on construction costs and the location where its built, some projects have charged between Rs.10,000 and Rs.60,000 (or higher).⁸¹ Of the total funding allocated to RAY⁸², 5% will go to capacity building of state and city officials as well as other related administrative tasks. Mandatory reforms that states need to carry out include: i) provision of lease rights to slum dwellers who have been residents of the slum for more than 5 years, ii) reservation of units in future housing projects, iii) allocation of 25% of municipal budget for the provision of services to the poor, and iv) development of a cadre for development and poverty alleviation.⁸³

Even though, ‘on paper,’ the central government has increased its emphasis on slum development, it still does not recognize the limitations of some people, particularly the most deprived. No mention of eviction rules and procedures, emergency shelter, or free housing is vested in any of the two schemes. This is of particular importance because, while some evictions might be necessary, procedures and regulations in place do not stipulate concrete processes to minimize and remedy the effects of such practices on the poor.

In addition, and as it is illustrated in the sub-section on slum dwellers below, the costs of housing and basic services (even at 10% of total cost) can be too daunting for many poor households living in urban areas. Furthermore, as the Strategy Plan 2012-2017 of the Government of India describes, the government has failed to reduce costs of basic necessities to the poor. For example, the Strategy Plan reports that the poor continue to pay ten times more (or higher) for water than the non-poor.⁸⁴ With costs as high as these incurred by the poorest of the poor, it is unrealistic to expect them to be able to pay for housing, as well as access to amenities they don’t currently have or can pay for (electricity for instance),

⁷⁶ “Rajiv Awas Yojana (RAY) Scheme Guidelines 2013-2022.” *Ministry of Housing and Urban Poverty Alleviation, Government of India.*

⁷⁷ *Ibid.* Pg. 5.

⁷⁸ This action plan is also known as the Slum-free City Plans of Action (SFCPoA).

⁷⁹ *Ibid.* Pg. 7.

⁸⁰ SC refers to Schedule Caste, ST to Schedule Tribes, and OBC to Other Backward Classes.

⁸¹ “Housing beneficiary contribution to touch Rs. 66,000 for JNNURM unit.” January 24, 2014. *The Hindu*; Rao, G.V.R. November 18, 2010. “Banks reluctant to give JNNURM housing loans.” *The Hindu*;

“A first-hand look at in situ development in Pune.” March 26, 2014. *Transparent Chennai*.

⁸² According to *The Economic Times* interim budget allocated for RAY implementation is around Rs. 2400 crore (around USD 398.47 million).

Source: “Vote on Account 2014: Sharp hike in budgetary allocation for HUPA Ministry.” February 17, 2014. *The Economic Times*.

⁸³ *Ibid.* Pgs.14-15.

⁸⁴ *Ibid.* Pg. 321.

especially at the levels stipulated by the JNNURM and the RAY scheme. Thus, in the case of both schemes, the poor argue that the most in need amongst them won't have access to these benefits because they can't cover the stipulated costs.

B. State Government Actors

Detailed interviews...showed how slums on the official list represent the pinnacle of a vast iceberg, home not so much to the poorest people as to a settled lower-middle class...This type of slums is furthest from the official definition.⁸⁵

While national government schemes have increasingly stipulated the need for each state to adopt a new policy on property rights and protect slum dwellers from potential evictions, no law or comprehensive scheme has been developed to address the issue in Karnataka. Furthermore, the rules and policies on this matter are extremely complicated, making advocacy efforts costly and inefficient.

According to the 2009 Urban Development Policy for Karnataka, land and housing policy should entail objectives including improving registration of land titles, and providing housing for the lower income segments of the population. Within Bangalore, the Bangalore Development Authority, is the planning authority in charge of land development and housing for the metropolitan area of the city.⁸⁶ As such, BDA prepares a Comprehensive Development Plan every 10 years to craft policy on issues related to city development.⁸⁷ Among the recognized needs of the city's Master Plan, BDA exhorts relevant state institutions to attend to the needs on housing and civic amenities in an urgent manner.⁸⁸ The plan also reports steps taken to implement GIS and MIS systems⁸⁹ to collect and process more accurate and comprehensive data on the city and its needs. Nevertheless, the BDA Master Plan brief mostly underscores the need to improve infrastructure to facilitate and promote big investments and better connections to the city, again prioritizing infrastructure development for the non-poor.

State and Local Efforts to Improve Conditions in Slums

The phenomenon of increasing slums in Bangalore led to the enactment of the Karnataka Slum Areas (Improvement and Clearance) Act of 1973, which also mandated the establishment of the Karnataka Slum Development Board (KSDB)^{90,91} As defined by the Karnataka Slum Areas Act of 1973—a law enacted by the state in line with the national Environmental Improvement of Urban Slums (EIUS)⁹² scheme—in sub-section (1) of section 3, a slum “is likely to be a source of danger to health, safety or convenience of the public of that area or of its neighborhood, by reason of the area being low-lying, insanitary, squalid, over-crowded.”⁹³ These areas are not appropriate or safe for people to live in, and can become niches of health diseases, crime, and abuse.

Currently, two main public institutions work on slum development: the Greater Bangalore Municipal Corporation (BBMP) and the Karnataka Slum Development Board (KSDB). BBMP is the municipal

⁸⁵ Krishna, Anirudh, M.S. Sriram and Purnima Prakash. 2013. “Slum Types and Adaptation Strategies: Identifying Policy-Relevant Differences in Bangalore.” 2013. *With the Indian Institute of Management, Bangalore*. Presented at an international workshop at the University of Manchester UK on “Living in Low-income Urban Settlements in an Era of Climate Change.” Pg. 4, par. 4.

⁸⁶ “Urban Development Policy for Karnataka.” 2009. *Urban Development Department*.

⁸⁷ “Draft Master Plan-2015.” *Bangalore Development Authority*.

⁸⁸ *Ibid*.

⁸⁹ GIS refers to Geographic Information Systems and MIS refers to Management Information Systems.

⁹⁰ KSDB is one of three agencies under the Karnataka Department of Housing and was previously known as the Karnataka Slum Clearance Board.

⁹¹ “The Karnataka Slum Areas Act 1973.” *Government of Karnataka*.

⁹² This scheme began in 1972 to improve living conditions of slums in India.

⁹³ “The Karnataka Slum Areas Act 1973.” *Government of Karnataka*. Section 1(a).

administration body of Bangalore, while KSDB is a state board established to officially recognize a slum as such, and provide safe housing and basic services to slum residents. Once slums are declared by KSDB, as described in more detail below, KSDB becomes responsible for improving their conditions. In the meantime, BBMP is the main entity that provides services—including housing and housing rights—as it deems necessary.⁹⁴ While BBMP policy states that 20% of total funding must be spent on ST/SC/OBC population, the amount is small for a segment that is greater than 20% of the population, and that is in great need for support.⁹⁵

For slum declaration to occur, the following tasks must be completed: a slum resident/representative⁹⁶ physically goes to KSDB offices and declares the slum to a KSDB official; KSDB then conducts a social economic survey of the slum, maps the zone, and investigates the ownership of the area. If the slum fulfills KSDB criteria, KSDB prepares an official application and submits it to the KSDB Deputy Commissioner and the Commissioner who decide whether to *notify* (also known as *declare*) the slum. Once a slum is notified/declared, KSDB becomes responsible for providing the infrastructure and basic services necessary to ensure secure housing and a better quality of life. Benefits include housing, housing rehabilitation, housing rights, basic service provision (access to clean water, electricity, paved roads, etc.), and others. Slums that are in the gazette but are not notified are known as *undeclared or non-notified* slums. The time that it takes to declare a slum is unclear, and the benefits remain questionable. Also, the efforts to promote the benefits of notification appear weak.

Slums that get declared by KSDB do not receive housing rights automatically or uniformly. Some slum residents are offered possession⁹⁷ titles, and are relocated to low quality public housing, while others are given land titles⁹⁸ to their current dwellings. The reasons for this choice remain unclear. An NGO representative also said that a shortcoming of KSDB was the lack of inclusion of slum dwellers in the rehabilitation/development processes of their slums.⁹⁹ Moreover, various news and reports that will be discussed later in this paper, also recall problems with the quality of slum improvements undertaken by KSDB and BBMP.

A representative from the public sector mentioned that the Board (KSDB) has a team working on raising awareness of the notification process. However, only 3 staff members have been assigned to work on this, all of whom have multiple responsibilities aside from raising awareness.¹⁰⁰ The website does not compensate for this, as it does not provide basic information on criteria and process of notification.

In addition to these problems, public respondents also seem to have different levels of knowledge on slum rights and evictions. Most respondents from relevant public institutions say that evictions are illegal if you are an authorized occupant,¹⁰¹ but one added that settlements in private land are more susceptible to evictions and are also harder to notify. Nonetheless, what appears to be clear is that security of tenure for slum dwellers who live in non-notified or unlawful settlements are subject to the discretion of other government bodies (such as BBMP and politicians) that decide when and how to help them. Thus, these dwellers are not only the most vulnerable and deprived, but they are also the most ignored by the policies and practices of the public sector, and the most affected by evictions.

⁹⁴ Kamath, Lalitha. 2012. "New Policy Paradigms and Actual Practices in Slum Housing." *Review of Urban Affairs, Economic and Political Weekly*. Vol. XLVII No. 47 & 48. ;

Anonymous Interviews. Public Officials. *Government of Karnataka*.

⁹⁵ "Slum population more than doubled in Karnataka in a decade." December 21, 2013. *The Hindu*.

⁹⁶ In this case a "representative" refers to anyone who desires to represent the slum and/or declare it as such to KSDB.

⁹⁷ Possession titles refer to the right to live there (but not right to the land).

⁹⁸ Also known as *hakku patra*, which provides full rights to the land where the home resides.

⁹⁹ Interviews. NGO representative. Karnataka

¹⁰⁰ Anonymous Interview. Public Official. *Government of Karnataka*.

¹⁰¹ Authorized occupant usually refers to slum dwellers from notified slums, while unauthorized are generally those dwellers from non-notified or unrecognized slums.

Accuracy of Slum Data

Currently, according to the 2010 KSDB slum list, only 310 of 597 of Bangalore's slums have been *declared/notified*. The rest of the slums in the list remained *undeclared/non-notified*, most of which have been in the KSDB's gazette for years or decades.¹⁰² Based on 2011 data, a total of 285 slums have been notified, with an average of 7 slums notified each year in Bangalore. Moreover, and as Table 1 shows, the last six year period saw a 40% reduction in the number of slums notified. This would echo NGO concerns that slum notification has become more difficult in recent years.¹⁰³

Table 1: Number of Slums Notified in Bangalore (from 1976-2011)

Year Period	Number of Notified Slums	Number of Huts Notified	Number of Population Notified
1976-1981	26	6596	37536
1982-1987	57	15244	92367
1988-1993	36	4488	24797
1994-1999	71	12718	72133
2000-2005	47	12671	63459
2006-2011	28	3568	19261

Source: "Statement Showing the Details of Declared Slums in Bangalore City." December 12, 2011. *Karnataka Slum Development Board*.

Interestingly, however, the information presented in the annual reports is quite different. For instance, from 2009-2010 KSDB claims to have declared a total of 290 slums in the city, which changed to 310 as stated in the 2010-2011 report, and 386 in 2011-2012.¹⁰⁴ This is particularly unnerving, as both tables that show the total numbers of notified slums per area in the 2010-2011 and 2011-2012 reports have 386 as the total slums declared.

In contrast to the numbers provided by KSDB, the Directorate of the Municipal Administration (DMA) slum list of 2010 indicates that 227 slums (out of 579) have been notified in Bangalore.¹⁰⁵ In addition to these undeclared slums, there are many other slums that have not been added to the government's list.¹⁰⁶ For the purpose of clarity, I refer to this third category of slums as *unrecognized* slums.

As a result of the differences and discrepancies in slum information gathering and record keeping common throughout India, the national schemes' mandated all states to increase their efforts to gather accurate data on slums, and develop comprehensive and detailed GIS maps of slums in each state.¹⁰⁷ In the case of Karnataka, the task has been undertaken by the DMA. The DMA is also the agency in charge of distributing and approving funding from the central government on scheme related projects undertaken by the state.¹⁰⁸ According to the RAY scheme, project proposals that request national funding to improve slums need to use the GIS data to ensure that correct measures of rehabilitation are undertaken.¹⁰⁹ In the case of KSDB, however, projects have been rejected, because the staff of KSDB has used their own data (often outdated) rather than the data offered by the new GIS system.

¹⁰² "Karnataka Slum Clearance Board Districtwise Identified (Undeclared) Slum Population Details." 2010. *Karnataka Slum Development Board*.

¹⁰³ Anonymous Interview. NGO and Civil Society representatives from Karnataka.

¹⁰⁴ "Slum Details." *Karnataka Slum Development Board Annual Report 2009-2010, Annual Report 2010-2011 and Annual Report 2011-2012*.

¹⁰⁵ List of Slums in Bangalore. *Directorate of the Municipal Administration*. 2010.

¹⁰⁶ Marx, Benjamin, Thomas Stoker, and Tavneet Suri. 2013. "The Economics of Slums in the Developing World." *Journal of Economic Perspectives*. Volume 27. Pgs. 187-210.

¹⁰⁷ "Rajiv Awas Yojana (RAY) Scheme Guidelines 2013-2022." *Ministry of Housing and Urban Poverty Alleviation, Government of India*.

¹⁰⁸ Anonymous Interview. Public Official. Government of Karnataka.

¹⁰⁹ *Ibid*.

These inconsistencies are concerning, as lack of clarity on slums, slum conditions, as well as outcomes, indicate salient inefficiencies in the undertakings of the Board. Furthermore, while representatives at the government level indicate concerns of the Board’s work and the previous budget was not spent, it has been doubled.¹¹⁰

Notified Slum



Non-Notified Slum



Unrecognized Slum



Unrecognized Slum



111

Shortcomings of Implementing National Slum Development Schemes

Visits to slums make it clear that the central scheme’s requirement of “comprehensive service provision” is not translating on the ground. Both KSDB and BBMP provide isolated and individual services, and only a few projects focus on providing basic services holistically (waste management, electricity, water, and housing) as required by the JNNURM and RAY guidelines.

Moreover, the data provided on RAY rehabilitation plans for Karnataka is quite questionable. For instance, under several lists of RAY beneficiaries, KSDB indicates that the beneficiaries, who come from notified settlements and have formal jobs, have an **annual** income of around 9,000-20,000 rupees.¹¹² However, data gathered by Duke’s *Pathways to Prosperity Study*¹¹³ shows that the average

¹¹⁰ Ibid.

¹¹¹ The pictures illustrated here were taken by Issel Masses, Rebecca Gil and Ajay Parikh in 2013.

¹¹² “Karnataka Slum Development Board, No 4 Division, Bangalore. Byatarayanapura Area ,Consolidated Report of Socio Economic Survey.” *Karnataka Slum Development Board*.

¹¹³ Krishna, Anirudh. *Pathways to Prosperity Study*. Jana Urban Foundation, Jana Urban Space Foundation and the Sanford School of Public Policy, Duke University.

income of this type of household is well over 7,000 rupees a **month**. This brings up the question of whether the target population is in fact the beneficiary population and whether KSDB services are going to the slum dwellers most in need. Moreover, one high level civil servant said that when they do provide services to the poor, they sometimes have to allocate some homes for the representatives of politicians or civil society groups who could otherwise threaten to boycott the project.¹¹⁴

Overall, it is clear that significant problems remain when implementing slum development schemes in Bangalore. The central schemes do not clearly stipulate how to address many of the challenges faced on the ground, local bodies are not using accurate data or implementing holistic projects in slums, and there is good reason to question whether the services provided actually benefit the most deprived.

C. *Slum Dwellers*

*For so many years we've built your buildings, now, when it's raining, you tell us to leave*¹¹⁵

As the documentary film “Bombay: Our City” shows, the poor move to cities to work on construction and other low-skilled jobs.¹¹⁶ The government allows these people to come to the cities believing that it is temporary, and that once the job is done, dwellers will go back to their native place. Meanwhile, slum dwellers are paid very low salaries, and constantly struggle to survive. Once the buildings are built and the space where the poor reside is needed, slum dwellers are evicted. Even though the documentary was filmed in 1984, it seems as if it came out yesterday.

After decades of “clearance” and “beautification” processes, and slum evictions, governments have realized that although slum dwellers living in the city are highly deprived, they rarely return to their native place. Data from the *Pathways to Prosperity Study* gathered in Bangalore shows that 52% of slum dwellers from the “worst-off” slums (*first-generation* slums) came to Bangalore because it was too difficult to survive in their native place (in most cases rural areas), while 29% moved because of the debts they had (see Table 2). Evidently, their decisions to move are driven by necessity and few (if not null) viable alternative options. So long as conditions such as those noted by respondents in this study prevail, it is unlikely that evictions will persuade them to go back to their native place.

Table 2: What is the principal reason for you to have come to Bangalore?

Reasons	Respondents from First-Generation Slums	Percent of Sample
Difficult to survive in the old place	314	52%
Other people were coming, we came with them	9	1%
Job offer in Bangalore	41	7%
Land subdivision	1	0%
Family dispute	2	0%
Debts	173	29%
Marriage	3	0%
Other reasons (such as unemployment and decreasing crop yields)	61	10%
<i>N</i>	604	-

Source: Krishna, Anirudh. *Pathways to Prosperity Study*. Jana Urban Foundation, Jana Urban Space Foundation and the Sanford School of Public Policy, Duke University.

¹¹⁴ Anonymous Interview. Public Official. *Government of Karnataka*.

¹¹⁵ Patwardhan, Anand. 1985. *Bombay: Our City*. 75 minutes. 49:50-49:47.

¹¹⁶ Ibid.

Evictions not only demolish a dweller's shelter, but the process also destroys the few belongings that dwellers have been able to acquire. They force slum dwellers to settle in other areas of the city, where housing conditions are worse and prospects for better jobs diminished. Thus, consequences of evictions can severely affect the livelihood of already impoverished and vulnerable people.¹¹⁷ Not surprisingly, the principal concern of slum dwellers who lack formal housing rights, is the threat of eviction. In the case of Bangalore, evictions are more likely to occur when slums have not been notified.

Box 1: Eviction in Ejipura, Bangalore

From January 18-21 of 2013, Bangalore experienced one of its biggest evictions in years. BBMP evicted 1,512 households (around 5,000 people, of which around 2,000 were children) who were living in Ejipura. The eviction took place after the High Court ordered BBMP to evict the slum dwellers, even when the government had already agreed to provide alternative shelter for tenants and allottees who were living in the Ejipura slum. According to the report developed by PUCL and HRLN, slum dwellers were only notified of the eviction 48 hours before it occurred, by a local Member of the Legislative Assembly (MLA). Only those who had lease-cum sale agreements in the slum are now promised housing.

The eviction left thousands without a roof. Many belongings were destroyed in the process. Children were traumatized by the event, and if they left to other areas of the city with their parents, they can no longer attend their previous school. This puts students behind academic schedule. According to the PUCL and HRLN report, amongst the destroyed belongings were many books and school supplies, further affecting children's ability to learn. Moreover, many evictees are now living in the streets exposed to more diseases and crime.

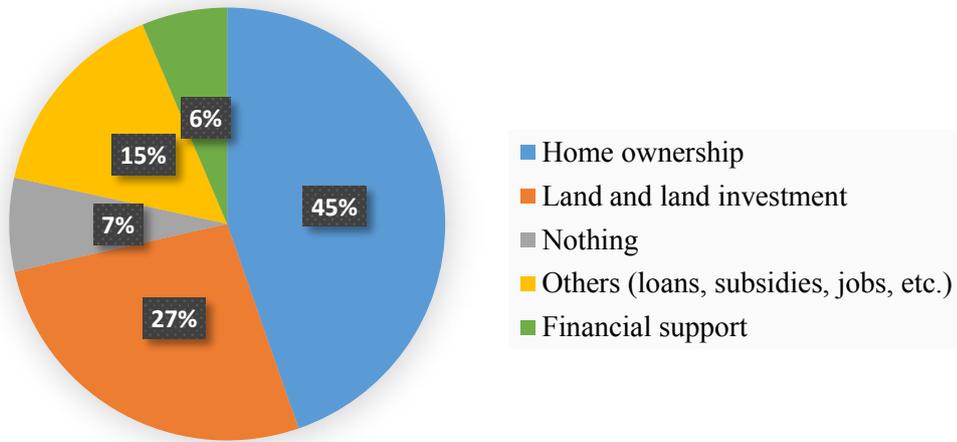
The eviction took place to make way for a commercial and residential project (which includes a mall that resulted from a concession agreement between BBMP and Maverick Holdings. According to the concession agreement, Maverick will build 1,640 flats for economically weaker sections (a term that refers to those living under the poverty line).

Source: "Governance by Denial: Forced Eviction and Demolition of Homes in Ejipura/Koramangala, Bangalore." 2013. *Housing and Land Rights Network (HLRN) and the People's Union for Civil Liberties (PUCL)*.

Security of tenure is very relevant for dwellers living in the *first-generation* (the poorest of the unrecognized) slums. As Graph 1 shows, when respondents were asked to indicate what they would like to receive from the government, respondents from the *first-generation* slums were mostly interested in home ownership (45%) and land or land investment (27%), only followed by nothing (7%) and financial support (6%).

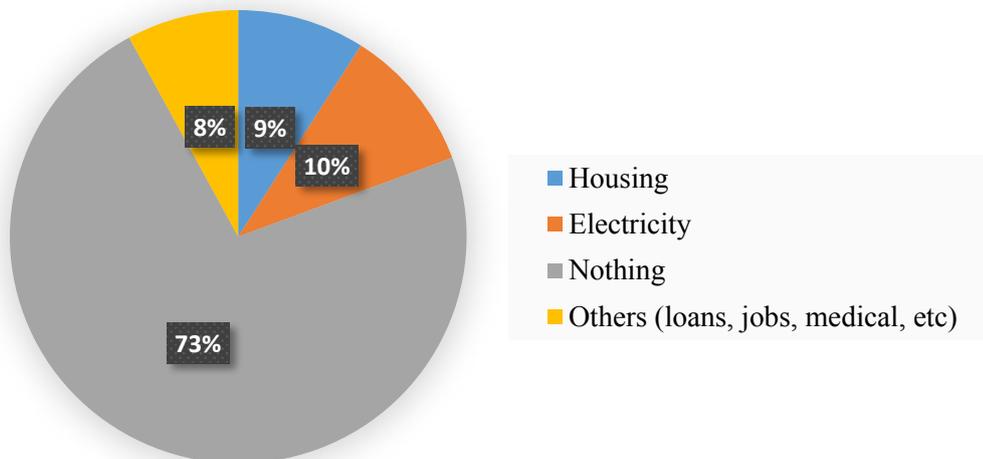
¹¹⁷ "Urban Policies and the Right to the City: Focus on the Right to Adequate Housing in India." 2012. *Chance2Sustain*.

Graph 1: What kinds of support would you like to receive from the government?



Moreover, as some may suspect, when the research team asked what they have received from the government, around 73% of respondents said nothing, followed by electricity (10%) and housing (9%).¹¹⁸

Graph 2: What kinds of support have you actually received from the government?



Slums are Heterogeneous

As Krishna’s research indicates, slums can be very different from each other and thereby, have divergent needs.¹¹⁹ According to data gathered by the *Pathways to Prosperity Study* team, slums in Bangalore vary in many aspects.¹²⁰ Dwellers from *fourth-generation* (“best-off”) slums have lived in Bangalore for an average of 38 years, and more than 97% of these respondents have lived in the city for more than 10 years. In contrast, respondents from *first-generation* slums have lived in Bangalore an average of 8 years, and less than 37% of residents of this group have lived in the city for more than 10 years. This illustrates the vast differences between slums, which also result in divergent housing needs.

¹¹⁸ Krishna, Anirudh. *Pathways to Prosperity Study*. Jana Urban Foundation, Jana Urban Space Foundation and the Sanford School of Public Policy, Duke University.
¹¹⁹ Ibid.
¹²⁰ Ibid.

Approximately 30% of both groups of respondents, those living in *fourth-generation* and *first-generation* slums, have moved more than once in the previous five years. Nevertheless, and as Table 3 shows, the *first-generation* dwellers are under much greater pressure to move. Of the respondents who moved, 9% of slum dwellers in *fourth-generation* slums were forced to leave, while 61% of the *first-generation* slum dwellers were force to move. Most *fourth-generation* slum dwellers mentioned high rent as a big factor leading to a move, followed by the desire to live in a better neighborhood. In the case of the *first-generation* slums, job reasons also caused 20% of respondents to move. This data indicates that those slums that have been around for a long time and are notified, have much greater security of tenure, while the most vulnerable are highly susceptible to evictions.

Table 3: Why did you move in the past 5 years?

Homes	Respondents from First-Generation Slums	Percent of Sample	Respondents from Fourth-Generation Slums	Percent of Sample
Lease expired	0	0%	37	9%
Wanted a better neighborhood	9	4%	47	11%
Rent was too high	2	1%	292	69%
Forced to leave by landlord	134	61%	38	9%
Family size changed	4	2%	23	5%
Conflicts with family or neighbors	1	0%	7	2%
For children's education	0	0%	4	1%
For job purposes	43	20%	6	1%
Went back to native place	5	2%		
Other	22	10%	22	5%
<i>N</i>	220	-	426	-

Source: Krishna, Anirudh. *Pathways to Prosperity Study*. Jana Urban Foundation, Jana Urban Space Foundation and the Sanford School of Public Policy, Duke University.

Furthermore, and as one may expect, 40% of *fourth-generation* slum dwellers own the house they live in, and only 20% of the *first-generation* slum dwellers claim ownership. Interestingly, while some *fourth-generation* slum dwellers possess the necessary documentation to stake out ownership claims, respondents from the *first-generation* slums do not have such papers. This could mean that most of the *first-generation* (the “worst-off”) slum dwellers that indicated ownership do not actually own the house or the land where the home sits in.

Table 4: Do you own the home in which you currently live?

Homes	Respondents from First-Generation Slums	Percent of Sample	Respondents from Fourth-Generation Slums	Percent of Sample
Yes	127	20%	542	40%
No	504	80%	813	60%
<i>N</i>	631	-	1353	-

Source: Krishna, Anirudh. *Pathways to Prosperity Study*. Jana Urban Foundation, Jana Urban Space Foundation and the Sanford School of Public Policy, Duke University.

Contrary to common beliefs, around 80% of respondents from the *first-generation* slums pay rent. Of those who rent (as opposed to own or lease), around 79% of *first-generation* respondents pay between 1-500 rupees per month on rent, while 30% of *fourth-generation* respondents who rent, pay between 501-1000 rupees, and 34% pay between 1001-1500 rupees (See Table 5).

Table 5: If you rent, how much do pay per month?

Monthly Amount	Respondents from First-Generation Slums	Percent of Sample	Respondents from Fourth-Generation Slums	Percent of Sample
0	70	14%	0	0%
1-500	396	79%	34	5%
501-1000	36	7%	223	30%
1001-1500	1	0%	252	34%
1501-2000	1	0%	154	21%
2001-2500	0	0%	53	7%
2501-3000	0	0%	12	2%
>3000	0	0%	12	2%
<i>N</i>	504	-	740	-

Source: Krishna, Anirudh. *Pathways to Prosperity Study*. Jana Urban Foundation, Jana Urban Space Foundation and the Sanford School of Public Policy, Duke University.

These rent costs, however, are far lower than the thousands of rupees that they would have to pay in order to access affordable housing as stipulated by the RAY scheme. Over 90% of these dwellers spend less than 6% of their monthly income on rent (see Table 6). Most slum dwellers from the *poorest* slums spend most of their income on food and loans and financing higher costs of housing—as well as paying additionally for services such as electricity—is simply not a viable option for many of them.

Table 6: What is the Share of Monthly Income Spent on Rent?

Percent of Income Spent in Rent	Count	Percent
<6%	462	92%
6-10%	34	7%
11-15%	4	1%
16-20%	1	0%
>20%	3	1%
<i>N</i>	504	-

Source: Krishna, Anirudh. *Pathways to Prosperity Study*. Jana Urban Foundation, Jana Urban Space Foundation and the Sanford School of Public Policy, Duke University.

Sources of Information and Connections

One of the key constraints of slum dwellers in protecting themselves from eviction is information regarding their rights, and the access to potential resources and/or useful connections to people who can influence change.¹²¹ As Table 7 shows, assets that also serve as information mechanisms, are used in different degrees depending on the type of slum dweller. Similar to *fourth-generation* slums, 75% of slum dwellers in the *first-generation* settlements have mobile phones and 55% of the latter group uses mobiles as a source of information. However, 88% of respondents in *fourth-generation* slums have TVs, while only 1% of the *first-generation* respondents have TVs (2% for radio).

¹²¹ These could include NGO representatives that can advocate on behalf of the dwellers, or politicians and government officials themselves, who have the power to influence decisions relevant to slum dwellers.

Table 7: Do you have any of the following assets in Bangalore?

Asset	Respondents from First-Generation Slums	Percent of Sample	Respondents from Fourth-Generation Slums	Percent of Sample
Television	6	1%	1205	88%
Radio	12	2%	99	7%
Mobile Phone	471	75%	974	71%
<i>N</i>	631	-	1365	-

Source: Krishna, Anirudh. *Pathways to Prosperity Study*. Jana Urban Foundation, Jana Urban Space Foundation and the Sanford School of Public Policy, Duke University.

Respondents from the *first-generation* slums seem to rely mostly on household and neighbors for information (See Table 8 below).¹²² This severely limits understanding of their rights and the mechanisms that can help them advocate against evictions. Dwellers of the *first-generation* slums rarely use any source other than themselves or their relatives, to acquire any type of document from the government. Interestingly enough, the *first-generation* slum dwellers use NGOs, CBOs, and leaders more often for this purpose than dwellers from *fourth-generation* slums. This could indicate that the “worst-off” slum dwellers are interested in using as many information sources and connections as they possibly can. Overall though, both categories of slum dwellers seem to lack the resources, information, and connections necessary to increase their protection from eviction.

In addition to information and connections, the ability to vote is a key influential factor in getting attention from the government. However, only 8.9% of respondents from the *first-generation* slums indicate having a Voter ID card in Bangalore, and only two respondents indicate having applied for one in Bangalore.

Table 8: Which among the following sources do you use regularly?

Source	Respondents from First-Generation Slums	Percent of Sample	Respondents from Fourth-Generation Slums	Percent of Sample
Community organization	61	10%	3	0%
NGO	3	0%	2	0%
Internet	4	1%	18	1%
Household members	542	86%	581	43%
Neighbors	512	81%	102	7%
Community leaders	56	9%	18	1%
Government officials	33	5%	10	1%
Radio	28	4%	85	6%
TV	50	8%	1229	90%
Newspaper	50	8%	328	24%
Local Assembly	69	11%	85	6%
Mobile Phone	347	55%	-	-
Other	1	0%	1	0%
<i>N</i>	631	-	1365	-

Source: Krishna, Anirudh. *Pathways to Prosperity Study*. Jana Urban Foundation, Jana Urban Space Foundation and the Sanford School of Public Policy, Duke University.

¹²² Krishna, Anirudh. *Pathways to Prosperity Study*. Jana Urban Foundation, Jana Urban Space Foundation and the Sanford School of Public Policy, Duke University.

Moreover, neighborhood survey results indicate that the *first-generation* slum dwellers use themselves and their neighbors when they need a document from a public official or face the threat of eviction. NGOs were not mentioned, as a “to-go” contact, for any of the two needs. Furthermore, only one slum mentioned NGOs having presence in the slum during the last ten years, on issues of empowerment and education. Only two the *first-generation* slums mentioned community-based organizations (CBOs) within their respective neighborhoods.

Only 3 out of the 23 *first-generation* slums mentioned that the government had done some work in the last ten years. One of these works was a school, another was a road, and the third was the provision of election cards. None of the 23 slums have submitted an application for slum notification and most of the *first-generation* slums consist of people from Schedule Caste (SC) and Schedule Tribe (ST). This is problematic, since it further delays the notification process and KSDDB will only add a slum to the gazette if someone physically goes to the Board and requests that the slum be added to the list for notification consideration. As all interviewees’ asserted, slum dwellers who go through the notification process do it to get protection from eviction, gain access to housing and other basic services.¹²³ Moreover, until notification happens, slums have less power to demand services from the government or ask for protection from eviction.

Of the *fourth-generation* slums that provided information on caste composition,¹²⁴ all had a combination of General Caste (Gen), OBC, SC and ST. Only 2 out of 10 *fourth-generation* slums mentioned that the government had done some work in the last ten years. One had a water facility built and another a paved road. No NGO projects were declared, but 9 of 12 slums had CBOs in their respective neighborhoods.

Table 10 summarizes the implications of these information asymmetries in regards to collective mobilization. Based on this information, dwellers from the *first-generation* slums are the most vulnerable, have very limited information on their rights and little or no connections to help achieve them. This makes it harder for them to find the time and resources necessary to mobilize and advocate effectively for their needs.

Table 10: Information Asymmetries of Slum Dwellers in Regards to their Rights and Eligible Benefits

Information Imperfection	Magnitude of Problem	Benefits of Correction	Costs of Correction	Correction Advised?
Dwellers from Fourth-Generation Slums	Low-Medium	Low	Low	No
Dwellers from First-Generation Slum	High	High	High	Yes

Source of information: Krishna, Anirudh. *Pathways to Prosperity Study*. Jana Urban Foundation, Jana Urban Space Foundation and the Sanford School of Public Policy, Duke University.
Source of tool: Corduneanu-Huci, Cristina; Hamilton, Alexander; Ferrer, Issel Masses. 2013. *Understanding Policy Change: How to Apply Political Economy Concepts in Practice*. Washington, DC: World Bank.

D. NGOs

*Without the urban poor there is not a city at all, we are the engineers of the city.*¹²⁵

Particularly in Bangalore, slum dwellers do not seem to have sufficient resources to mobilize effectively in order to protect themselves from eviction and help themselves protect their rights (although this varies

¹²³ Anonymous Interview results.

¹²⁴ Eleven of the twelve notified slums gave a response to this question.

¹²⁵ Prabhakar, Rajendran. Representative from the Forum of Urban Deprived Communities for Social Justice. Interview.

according to the type of slum). To address this, NGO's, such as the Housing and Land Rights Network (HRLN) and the National Federation of Slum Dwellers, are working with smaller communities to inform them of their rights, and/or help them mobilize and advocate for notification and other benefits.

For instance, as Box 1 illustrates, HRLN and PUCL just released a report that illustrates the violations committed by the government during the biggest recent eviction in Bangalore.¹²⁶ The groups presented the compilation of a timeline of events, the facts of the eviction, the standards related to housing and eviction, the legal attempts to expedite eviction, and the government's behavior during the process. The groups also present facts of the eviction's aftermath.¹²⁷

NGO Advocacy Efforts

Based on the interviews conducted with NGO representatives, collective efforts have not led to significant improvements for the livelihood of slum dwellers, particularly those who have not been notified. NGO representatives have a good understanding of the notification process and recognize that connections (mostly political) can help speed such process. They argue that, although slum dwellers would like to receive benefits as a result of the notification process, their priority is often housing security. An NGO representative referred to the "Right to the City" to argue that slum residents have been part of the city and should be treated as such (with housing, and more specifically title deeds).¹²⁸

When respondents talked about the notification process, an NGO representative mentioned that, in recent years, notification has become more complicated, highly political, time-consuming and costly. Another representative talked about how he has created a coalition of smaller NGOs and CBOs to unite efforts in protecting slum dwellers from evictions and advocating for housing rights (among other things).¹²⁹

Most NGOs, however, have multiple duties and objectives, and limited resources. Some NGOs work in collaboration with the government, such as SPARC and AVAS, while others focus on specific strategies to demand access to services from the government. Other scholars have argued that some NGOs have developed close relationships with the government, and that this has led to corrupted deals that further hurt the people and delegitimizes dwellers beliefs in NGOs willingness to help them.¹³⁰

Most NGO representatives interviewed for this study work on helping slum dwellers with the notification process and attempting to protect slum dwellers from evictions by implementing efforts such as filing Public Interest Litigations (PILs), and working in collaboration with the government to implement schemes and connect government benefits with the poor.¹³¹ NGOs in Bangalore, for the most part seem to work in silos or only partner with a few other NGOs when developing efforts to advocate for security of tenure. This might be jeopardizing their ability to succeed at a specific goal and mobilize resources more effectively. Moreover, some NGOs were highly reluctant to provide information on their projects, which might suggest distrust of the environment and fear of potential repercussions for sharing valuable information.

Based on this research, it appears that it has been challenging for NGOs to gather sufficient resources and acquire influential power to advance security of tenure.¹³² While limited information is available that analyzes these groups, when compared to other cases like that of South Africa, one can see a bigger

¹²⁶ The eviction report is available online to allow anyone who is literate and can access the Internet the opportunity to read it.

¹²⁷ "Governance by Denial: Forced Eviction and Demolition of Homes in Ejipura/Koramangala, Bangalore." 2013. *Housing and Land Rights Network (HRLN) and the People's Union for Civil Liberties (PUCL)*.

¹²⁸ Anonymous Interview Results. NGO representative. Karnataka.

¹²⁹ Anonymous Interview Results. NGO representative. Karnataka.

¹³⁰ Kamath, L. "New Policy Paradigms and Actual Practices in Slum Housing." *Review of Urban Affairs*. December 1, 2012. And Interviews conducted with KSDB, DMA, and BBMP.

¹³¹ Anonymous Interview Results. NGO representative. Karnataka.

¹³² Anonymous Interview Results. NGO representative. Karnataka.

union of NGOs, with characteristics of leverage that are missing in some NGOs working on these issues in Bangalore.

E. Private Sector Actors

Private actors must also be taken into account in this analysis. As it often occurs in market-led economies, private actors have considerable influential power in India. Consequently, scholars have documented how the transition to a liberalized economy led to a greater focus on the part of the public sector to provide physical infrastructure and institutional mechanisms that would please existing and potential Indian investors as well as international actors.¹³³

Public Sector Focus on Private Sector Led Growth

Karnataka has a population of around 61 million and a growth rate of 15%.¹³⁴ Given its rapid growth, some argue that the ‘Karnataka Model of Development’ is an example of successful liberal economic growth. The model, implemented since the 1970’s, aimed to advance decentralization while simultaneously attracting investments to help develop Karnataka’s manufacturing, information technology (IT), and biotechnology sectors.

Despite its success, Karnataka suffers from vast inequality within and between rural and urban areas.¹³⁵ A well-known measure of intra-society inequality is the Gini coefficient, where the highest level of inequality is rated at 1 and the lowest is 0. The closer to 0 a society’s coefficient is, the fewer its disparities. To show the disparities in the context of India, the Government indicates that from 2004-2005, the Gini coefficient of Karnataka urban areas was .36, one of the highest in the country. Its urban coefficient was lower, with a .23.¹³⁶

By the 1970’s, Bangalore, the capital city of Karnataka, began to experience an increase in private sector investment. Given India’s increasing emphasis on liberalization policies, the city invested on building the infrastructure needed to modernize and “beautify” Bangalore and to continue incentivizing companies to come to the city. Consequently, by the 1980’s, the city began to see real estate and foreign direct investment booms. A few decades later, Bangalore became a massive IT hub, also known as the ‘silicon city’. While it’s clear that such impressive growth did increase opportunities for the middle and higher income groups, it generated adverse effects for the lower-income population.¹³⁷ The government, continued to focus on incentivizing private investments and as a result, this sector became more powerful and influential.¹³⁸

The investment boom has also led to a significant and rapid increase in the construction of new areas of the city. As described earlier, the poor continue to be used for construction and low-skilled jobs, and expelled when no longer needed. As land where they originally settled increases in value, it becomes more desirable for investors to acquire—given the strategic location of areas of the city that opened opportunities for profit and growth—and thus, evictions happen.¹³⁹ The eviction in Ejipura is a typical

¹³³ Aranya, Rolee. 2008. “Location theory in reverse? Location for global production in the IT industry of Bangalore.” *Environment and Planning*. Volume 40. Pgs. 446-463;

Benjamin, Solomon. 2000. “Governance, economic settings and poverty in Bangalore.” *Environment and Urbanization*. Vol. 11 No. 1.

¹³⁴ “Census of India.” 2011. *Government of India*.

¹³⁵ “Karnataka: A Vision for Development.” 2008. *Karnataka State Planning Board*.

¹³⁶ “Human Development, Equity and Environment 2010-2011.” *Economic Survey, Government of India*.

¹³⁷ Aranya, Rolee. 2008. “Location theory in reverse? Location for global production in the IT industry of Bangalore.” *Environment and Planning*. Volume 40. Pgs. 446-463.

¹³⁸ Marx, Benjamin, Thomas Stoker, and Tavneet Suri. 2013. “The Economics of Slums in the Developing World.” *Journal of Economic Perspectives*. Volume 27. Pgs. 187–210.

¹³⁹ Note that this is not the only eviction type that occurs, however, it is a prominent one.

example of the scenario where the government makes an agreement with a big corporation for commercial land development, before addressing questions of rehabilitation or reallocation of the slum dwellers who are living in the area.¹⁴⁰ In these circumstances, slum dwellers are harmed, not only by the practice of eviction, but the process by which these evictions take place. For instance, the fact that some officials, as we shall see below, can arbitrarily decide to evict slum dwellers without prior notice, makes dwellers far more vulnerable than they would be if government officials were always required to provide notice and/or assistance for dwellers to find alternative accommodation prior to eviction.

The NGO representatives interviewed for this study also accentuated the view that liberalization policies continue to prioritize foreign investments, the creation of PPP projects, and the privatization of services. According to these representatives, and echoing what many scholars have argued, these agreements often occur without acknowledging and considering the inefficiencies that could (and have) arise and the high cost implications of these policies for the poor. For instance, Kamath's observations of BBMP work on the ground finds that when construction and provision of basic services were outsourced to the private sector, it was harder for slum dwellers to approach the responsible entity, and for BBMP to address it.¹⁴¹

Understanding the influence and needs of the private sector in this context is extremely important. Due to the market-led economic model of the state (and the city) the government is encouraged to promote policies that lead to more investment and growth. This gives power to the sector, which is demanding land and infrastructure in exchange for increasing investments. As a result, prime land is contested and slum dwellers are pushed out.

F. Media

The media has also been an influential actor in the way it portrays residents of slums, as well as the government's duty to invest in improving the lives of the poor. As Anand Patwardhan argues, even movies like *Slumdog Millionaire*, which demonstrates the hardship of the poor (something uncommon for TV shows and films in India), also protect the beliefs of the elites because it "locates the cause and effect in the same area...that means that the poor are their own enemies...they do it to themselves."¹⁴² Thus, at least for Patwardhan, the movie sends a message that the conditions of the poor are not the problem of the more fortunate.

Most who watch TV in India, can agree on the fact that many movies and television productions portray slums as criminal centers. As documentary films like *Bombay: Our City* show, slum dwellers have been stereotyped as criminals and people who "choose" to be in unfortunate and destitute situations. Even reading Supreme Court decisions that refer to slum conditions as "pathetic" reflect the lack of identification and sensitization that continues to exist within many non-poor in regards to the poor and their deprived conditions.¹⁴³ Nevertheless, some exceptions to this pattern have emerged. For instance, Satyamev Jayate is one example of a talk show that portrays social issues relevant to India.¹⁴⁴

In contrast to TV, the news often reports the shortcomings of public institutions when providing housing and services to the poor. At least to some extent, the news demonstrates the failure and inefficiencies that need to be addressed and the suffering that slum dwellers face as a consequence.¹⁴⁵ Stories of public housing collapses, protests on housing delivery failures, and eviction attempts and eviction halts are

¹⁴⁰ "Governance by Denial: Forced Eviction and Demolition of Homes in Ejipura/Koramangala, Bangalore." 2013. *Housing and Land Rights Network (HLRN) and the People's Union for Civil Liberties (PUCL)*.

¹⁴¹ Kamath, Lalitha. 2012. "New Policy Paradigms and Actual Practices in Slum Housing." *Review of Urban Affairs, Economic and Political Weekly*. Vol. XLVII No. 47 & 48.

¹⁴² "In Conversations with Anand Patwardhan." *Urban Lens 2013, Indian Institute of Human Settlements*. 22:50-24:00

¹⁴³ *Smt. Jayanthi and Ors. Vs. State of Karnataka and Ors.* 2013. High Court of Karnataka. Pp. 5

¹⁴⁴ Khan, Aamir. *Satyamev Jayate*. 2012-Present. Documentary/Talk Show.

¹⁴⁵ West Law News Search on "Slum Dwellers"

regularly seen in newspapers like *Times of India* and *Hindu*.¹⁴⁶ Nevertheless, most media continues to portray slums as crime centers. This, in turn, influences the perceptions of the non-poor on slum dwellers. As long as the non-poor see slum dwellers' deprivations as "fate" or as "self-made problems", it is unlikely that they will join the poor in advocating for the fulfillment of their rights.

VIII. The Right to Housing

In addition to understanding the stakeholders that are relevant in this context, this section presents a brief discussion of the different rights and standards related to housing that India has stipulated or abided by at the international, national and state level. After describing how both courts—the High Court of Karnataka as well as the Supreme Court of India—have interpreted the right to housing and how they have (or have not) protected slum dwellers from eviction, the chapter considers the merits of PIL as a means for bringing sharpened attention to policies that declare to be pro-poor.

Right to Housing at the International Level

The right to housing in India plays out at 3 levels—international, national, and local (state)—with different implications flowing from each level. At the international level, India ratified the *International Covenant on Economic, Social and Cultural Rights* in 1979, which explicitly states in Article 11.1 the right to adequate housing.¹⁴⁷ Furthermore, Article 27.3 of the *Convention on the Rights of the Child*, ratified in 1992 by India, also stipulates that states have the duty to help parents ensure basic needs for the child, including housing.¹⁴⁸

The country also voted in favor of the *Universal Declaration of Human Rights*, which explicitly recognizes the right to housing through Article 25 (1). This article provides that "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, *housing* and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."¹⁴⁹ Moreover, according to the UN Guidelines on Development-Based Evictions and Displacement, "States must adopt legislative and policy measures prohibiting the execution of evictions that are not in conformity with their international human rights obligations" and "shall take steps, to the maximum of their available resources, to ensure the equal enjoyment of the right to adequate housing by all."¹⁵⁰

¹⁴⁶ West Law News Search on "Slum Dwellers". For example, titles of these types of news include "A voice for the voiceless", "Stop Slum Evictions" and "At the Cost of the Poor." "Living in the Danger Zone" is another self-explanatory titles example from news of *The Hindu*.

¹⁴⁷ Article 11.1 provides "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."

Also, Article 2.1 states "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

Source: "*International Covenant on Economic, Social and Cultural Rights*." *Office of the High Commissioner for Human Rights*.

¹⁴⁸ Article 27.3 notes "3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing."

Source: "Convention on the Rights of the Child." *United Nations Office of the High Commissioner for Human Rights*.

Note: Under the *Declaration and Reservations* Section of the CROC, the State of India says that "'While fully subscribing to the objectives and purposes of the Convention, realising that certain of the rights of child, namely those pertaining to the economic, social and cultural rights can only be progressively implemented in the developing countries...'"

¹⁴⁹ "Universal Declaration of Human Rights." 1948. *Office of the High Commissioner for Human Rights*.

¹⁵⁰ "Basic Principles and Guidelines on Development-Based Evictions and Displacement." *United Nations Office of the High Commissioner for Human Rights*. Pp. 6 pars. 22 & 23.

The Constitutional Right to Life

At the national level, Article 21 of the Indian Constitution declares, “No person shall be deprived of his life or personal liberty except according to procedure established by law.”¹⁵¹ Article 19 of the Constitution also allows citizens to move freely in the country and reside anywhere in India.¹⁵² The provision is subject to a claw back clause under Article 19.2 (5), which notes that,

“Nothing in 1[sub-clauses (d) and (e)] of the said clause shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.”¹⁵³

Moreover, several other clawback provisions apply to this part of the Constitution on *Fundamental Rights*. On the one hand, Article 13 says, “All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.”¹⁵⁴ On the other hand, Article 31C states,

“Notwithstanding anything contained in article 13, no law giving effect to the policy of the State towards securing [all or any of the principles laid down in Part IV] shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by [article 14 or article 19]; and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy: Provided that where such law is made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.”¹⁵⁵

Moreover, Article 33 also gives Parliament the discretionary power to make decisions on how different government bodies should apply these rights.¹⁵⁶

More encouragingly, under the *Directive Principles of State Policy*, Article 39 of the Constitution explicitly says that the State shall work to secure the “right to an adequate means of livelihood” and to ensure “that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.”¹⁵⁷ The Constitution also mandates that the State strive to address and minimize inequalities between individuals and groups.¹⁵⁸ Lastly, Article 32 (1) states “The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.”¹⁵⁹ Even so, Article 37 of this same Part of the Constitution says that “The provisions contained in this Part shall not be enforceable by any court, but the principles

¹⁵¹ *The Constitution of India*. Government of India Ministry of Law and Justice. Pg.10.

¹⁵² *Ibid*.

¹⁵³ *Ibid*.

¹⁵⁴ *Ibid*. Pg. 6.

¹⁵⁵ *Ibid*.

¹⁵⁶ Article 33 says “33. Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.— Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,—

(a) the members of the Armed Forces; or

(b) the members of the Forces charged with the maintenance of public order; or

(c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or

(d) person employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c),

be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.”

Ibid. Pg. 19.

¹⁵⁷ *Ibid*. Article 39a and 39c. Pg. 21.

¹⁵⁸ *Ibid*. Article 38.2. Pg 21.

¹⁵⁹ *Ibid*. Pg 18. (Article 32 refers to Part III of “Fundamental Rights” of *The Constitution of India*).

therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.”¹⁶⁰

Housing Security Rights at the State Level

In addition to the rights established and recognized by the government of India at the international and national level, the State of Karnataka has passed several Acts with implications for slum dwellers and their right to housing and/or to not be evicted. These, for the most part, are enacted in state statutes. Of the relevant statutes, I will focus on the following three: the Karnataka Slums Areas (Improvement and Clearance) Act of 1973, The Karnataka Municipal Corporations Act, 1976, and The Karnataka Public Premises (Eviction of Unauthorized Occupants) Act, 1974.

The Slums Areas Act was established with the objective to improve the conditions of, and clear slum areas in Karnataka. The act defines a slum and focuses on infrastructure development aspects related to housing (a “proper home”), sanitation (drainage, latrines, trash disposal system), and other infrastructure services (such as street lights). To that end, the act stipulates the need for the implementation of the Karnataka Slum Development Board. Worthy to note, the amendment added to this Act in 1984 established punishment measures that include imprisonment for those who construct a house or buildings without authorization from the government.¹⁶¹ Of particular importance are Section 5A and 5B which prohibit unauthorized occupation or construction of any sort, and stipulate that violation of the rule is punishable with imprisonment of up to three years, practically making this act a criminal offense.¹⁶²

The Corporations Act, establishes the municipal authorities, their duties and procedures.¹⁶³ Of most relevance is Section 288D (a), which gives the Commissioner the authority to evict without prior notice “any wall, fence, rail, step, booth or other structure or fixture which is erected or set up in contravention of the provisions of section 288A.”¹⁶⁴ This provision has been used in PIL cases, such as *Smt. Satyavva Vs. Hubli Dharwad Municipal Corporation*.¹⁶⁵

The Public Premises Act refers to the rules establishing procedures that must be undertaken in the State of Karnataka in order to evict unauthorized occupants.¹⁶⁶ According to Article 4 and 5 of the Act, a State officer first needs to provide a notification for why the state intends to evict, providing an opportunity for the occupant to respond. If after considering cause (assuming this is provided), the authorized officer determines that the occupant is an unauthorized one, then the state can proceed to create an order of eviction, which gives the occupant forty-five days to leave the premises before the occupant is forced to leave.¹⁶⁷ Any unauthorized occupier who returns to the premises after an eviction can be punished with imprisonment.¹⁶⁸

¹⁶⁰ Ibid. Pp 21. Other Articles in this Part relevant to this discussion include, Article 38 and 39.

¹⁶¹ *Karnataka Slums Areas (Improvement and Clearance) Act of 1973*. Government of Karnataka. Pg. 4.

¹⁶² Ibid.

¹⁶³ “The Karnataka Municipal Corporations Act, 1976.” *Government of Karnataka*.

¹⁶⁴ Ibid. Pg. 499

¹⁶⁵ *Smt. Satyavva Vs. Hubli Dharwad Municipal Corporation by its Commissioner*. 2011. The High Court of Karnataka. (Writ Petition No. 60976 of 2011).

¹⁶⁶ The Act defines unauthorized occupation in public spaces as “the occupation by any person of the public premises, without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.”

Source: “The Karnataka Municipal Corporations Act, 1976.” *Government of Karnataka*. Pg. 499.

¹⁶⁷ “The Karnataka Public Premises (Eviction of Unauthorized Occupants) Act, 1974.” *Government of Karnataka*. Pgs. 762-763.

¹⁶⁸ Ibid. Article 12. Pg. 766.

Box 2: Regulations that Can Limit the Ability of Slum Dwellers to Advocate for their Rights in India

Legislative bodies at the central and state level have passed regulations and laws that can considerably limit the ability of non-state bodies to advocate effectively for people's rights. For instance, in 2010, the central government of India passed the Foreign Contributions Regulatory Act. Section 11 of this Act states that "no person having a definite cultural, economic, educational, religious or social programme shall accept foreign contributions unless such person obtains a certificate of registration from the Central Government..." Additionally, as stated by Section 11 and 12, the government can reject an application if an individual within the organization or entity that requests such license has a pending conviction or has been prosecuted on any offence, (including, creating "communal tension or disharmony") or if the state considers that acceptance of the application can go against public interest. This is of particular concern to NGOs because it gives the central government full authority to decide when NGOs can receive foreign contributions and thus, can limit their ability to mobilize effectively.

An example of standards at the state level that have been used to restrict mobilization efforts by Civil Society is The Bombay Act, 1951. For example, Section 37 subsection 3 of the Act gives power to the Commissioner and District Magistrate to prohibit actions that might disturb public peace or safety, and "by order in writing, prohibit any assembly or procession whenever and for so long as it considers such prohibition to be necessary for the preservation of the public order: Provided that no such prohibition shall remain in force for more than fifteen days without the sanction of the State Government."

Sources: "Foreign Contributions Regulatory Act (FCRA), 2010." 2010. *Ministry of Law and Justice*. No. 42. ; "The Bombay Police Act, 1951." 1951. *State of Maharashtra*.; "The Bombay Police Act." *Human Rights Watch*.

Using the Courts to Advance Protection from Eviction

Public Interest Litigation (PIL), which originated in the 1970's, has been increasingly used as an attempt to guarantee the rights of the poor.¹⁶⁹ As defined by Singh, PIL is a type of litigation that "is concerned with the protection of the interests of a class or group of persons who are either the victims of governmental lawlessness, or social oppressions, or have been denied their constitutional or legal rights and who are not in a position to approach the Court for the redressal of their grievances due to the lack of resources, ignorance, or their disadvantaged social and economic position."¹⁷⁰

In the case of India, a country with an epistolary jurisdiction, slum dwellers and its representatives (acting *bona fide*) can seek help from the Supreme Court with the submission of a simple letter of request.¹⁷¹ High Courts also accept PIL cases in the same manner.¹⁷² The simplicity of such procedure—along with a common law system that makes decisions based on the constitution, regulations, statutes, and precedents—encourages slum dwellers and their representatives to seek this option when eviction concerns are salient. Given the lack of protection from evictions that are prominent in megacities of the country, many have sought help from the courts.

¹⁶⁹ Gauri, Varun. 2009. "Public Interest Litigation in India: Overreaching or Overachieving?" *The World Bank Policy Research Working Paper Series*. N. 5109.

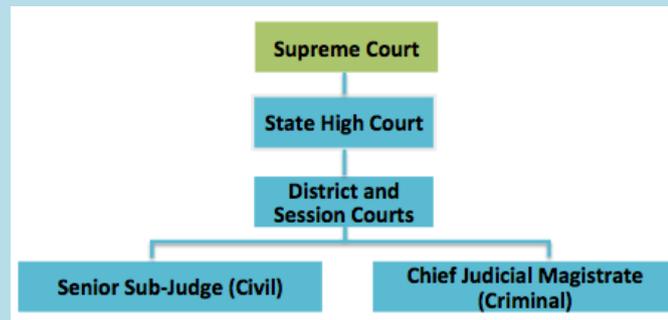
¹⁷⁰ Singh, Parmanand. 2008. "Public Interest Litigation." *Towards Legal Literacy: An Introduction to Law in India*. Oxford University Press. Pg. 1, Par. 1.

¹⁷¹ *Ibid.*

¹⁷² Kothari, Vineet and Shreshtha Gupta. "What is PIL?" *Manupatra*.;

O'Connell, Paul. 2012. "Developing Social Rights in India." *Vindicating Socio-Economic Rights: International Standards and Comparative Experiences*. New York: Routledge.

Box 3: Courts in India



There are three main types of courts in India. At the supreme level of jurisdiction lies the Supreme Court, which is the last court of appeal. As stated by Punam Khanna, “In civil cases, review of the court decision will lie if there is the discovery of new and important matter of evidence or there is a mistake or error apparent on the face of the record or any other sufficient reason.” The Supreme Court also has the power to evaluate whether a law, statute, or regulation is in violation of the Constitution. Below the Supreme Court, each state of India has a High Court, which is the highest jurisdiction of a state and is the only court in the state (besides the Supreme Court) with the jurisdiction to interpret the Constitution. Beneath the High Court, lays state courts, which are divided into District and Session Courts, and have the role to adjudicate civil (as a district judge) and criminal (as a Session Judge) cases. These courts have jurisdiction over the laws and regulations of specific areas and have other levels of magistrates and sub-judges below them.

Source: Khanna, Punam. 2008. “The Indian Judicial System.” *Towards Legal Literacy: An Introduction to Law in India*. Oxford University Press. P. 33, par 4. ; Graph and additional Information from: “Legal Research Guide: India.” 2014 Library of Congress.

Most of the PILs brought to the High Courts and the Supreme Court on the matter of evictions and security of tenure have resulted from disputes between government entities and the poor. On the one hand, the poor who litigate use many of the constitutional and international standards described in the previous section to argue that their rights to housing and to a dignified life are being violated by the evictions.¹⁷³ On the other hand, the government supports its decisions regarding eviction of slum dwellers, by arguing that these are unauthorized occupants, that if allowed to reside wherever they wished would end-up blocking the streets and creating disorder. Moreover, they also argue that the evicted slums are inhabitable and dangerous, and that the government has the authority to do this and to make decisions for the greater public good.¹⁷⁴ The analysis that follows, shows how the courts have responded to both sets of arguments.

PILs Brought to Karnataka’s High Court on Slum Evictions

From 2002-2012, a few relevant cases on evictions and the right to housing reached the High Court.¹⁷⁵ For instance, the *Murugan and Ors. Vs. Dept. of Housing and Urban Development and Ors.* (2003) case was brought by slum dwellers who claim to have been evicted from their premises even when they had lived in the “Tamilian Colony” for over 30 years. The dwellers stated that the Railway Authorities trespassed into their territory to build a wall, and demolished several slum houses without prior notice.

¹⁷³ Relevant standards used to support the argument include: Article 11.1 of the *International Covenant on Economic, Social and Cultural Rights*, Article 19-21, 39, 46, and 51 of the Constitution, and rules on eviction notices as provided under Article 4 and 5 of The Karnataka Public Premises Act.

¹⁷⁴ Relevant standards used to support the argument include: Article 38 of the Constitution, which gives the state authority provide social order, Section 5A and 5B of the Karnataka Slums Areas (Improvement and Clearance) Act of 1973, and Section 288D of The Karnataka Municipal Corporations Act, 1976.

¹⁷⁵ Public Interest Litigations (PIL) have been drawn from online databases of the High Court of Karnataka and Manupatra, using word searches such as “eviction” “slum eviction” “housing right” and “right to life”, from 2002 to 2012.

The respondents (the Department of Housing) denied this account, claiming that the territory the Railway Authorities used was theirs in the first place, they did not evict anyone from the colony, and no proof shows that these slum dwellers have lived there for a long time. All that was at stake here, argued the Department of Housing, was its prerogative to construct a wall around their own premises. According to the Court, lack of evidence presented by the slum dwellers as to their appropriate claim to the land led to the case dismissal.¹⁷⁶ Thus, no protection was provided.

In 2007 slum dwellers brought another case to the High Court, *Smt. Chandra Bai and Ors. Vs. Special Deputy Commissioner and Ors.* In this case, unauthorized occupants were evicted (and their houses and possessions demolished) for a second time from what has been declared a slum area by KSDB. Occupants demanded compensation and protection from eviction, however, they did not—in fact, *could not*—show proof of residency or ownership of the said homes. The Court ruled in favor of respondents and stated that the process of eviction undertaken was in accordance with the law, effectively providing a precedent that supports slum evictions of unauthorized occupants without alternative accommodation or compensation for the damages.¹⁷⁷

Another case that reached the High Court more recently is the *Smt. Jayanthi and Ors. Vs. State of Karnataka and Ors. (2013)*. In this case, the Deputy Commissioner of Karnataka took steps against the occupation of slum dwellers, even with an interim court order of stay. Slum dwellers claimed that under the Ashraya Scheme they were given “notification” allowing them to occupy the land, while the Deputy argued the contrary. Before facts were clarified, the respondents proceeded against such occupation, hence the suit. The Court ruled in favor of the occupants and stated that “if an issue/problem of removal of encroachment of government land and clearance of slum so as to provide suitable environment for healthy living to the poor and needy is not a serious issue, I am afraid which is the other matter more serious than this one.”¹⁷⁸

Also, in *Smt. Satyavva Vs. Hubli Dharwad Municipal Corporation by its Commissioner (2011)* slum dwellers sought the High Court for help from a potential eviction the Corporation wanted to undertake in the cities of Hubli and Dharwad.¹⁷⁹ The Corporation claimed that the dwellers were unauthorized occupants, and thus the Commissioner had the authority to evict the encroachments without prior notice. The dwellers, on the other hand, claimed to have lived there for around 30 years. They also argued that the Corporation had assigned numbers to their shelters and had been collecting taxes, effectively recognizing and benefiting from their occupation. Thus, the dwellers brought the case to ask for cancelation of the eviction notice. To counter-argue the claimants statements, the respondent invoked Sections 288-A and 288-B of the Municipal Corporations Act of 1976, arguing that these provisions allow the Commissioner to evict the settlements at its discretion. Contrary to prior judgments, which have mostly supported evictions, the High Court held that these provisions do not apply because “the petitioners are not in occupation of any wall, fence, rail, step, booth or other structure or fixture which causes obstruction in public streets or any stall chair, bench, box ladder, bale or any other thing whatsoever prohibited under Sections 288-A and 288-B of the Act”.¹⁸⁰ The Court thus, decided that dwellers would be evicted *after* the government found alternative shelter, and that “human compassion must soften the rough edges of justice in all situations.”¹⁸¹ Although prior cases did not seem to identify much with the needs of the poor, this latest court decision provides an important ‘pro-poor’ precedent

¹⁷⁶*Murugan and Ors. Vs. Dept. of Housing and Urban Development and Ors.* 2003. The High Court of Karnataka. (Writ Petitions 2104-2204 of 2001).

¹⁷⁷ *Smt. Chandra Bai and Ors. Vs. Special Deputy Commissioner and Ors.* 2007. The High Court of Karnataka. (Writ Petition 17403 of 2001).

¹⁷⁸ *Smt. Jayanthi and Ors. Vs. State of Karnataka and Ors.* 2013. The High Court of Karnataka. (Writ Petitions 32882-32903 of 2013 (KLR)). Pg. 6

¹⁷⁹ These two are cities of Karnataka.

¹⁸⁰ *Smt. Jayanthi and Ors. Vs. State of Karnataka and Ors.* 2013. The High Court of Karnataka. (Writ Petitions 32882-32903 of 2013 (KLR)). Pg. 7

¹⁸¹ *Smt. Jayanthi and Ors. Vs. State of Karnataka and Ors.* 2013. The High Court of Karnataka. (Writ Petitions 32882-32903 of 2013 (KLR)). Pg. 7.

towards greater security from eviction.

Protection from Eviction through the Use of the Supreme Court

As it can be observed, High Court rulings on housing right cases have not always been favorable to the poor. For this reason, legal advocates have also brought cases to the Supreme Court on matters of housing rights and evictions. The most well-known case of this kind was that of *Olga Tellis and Ors. Vs. Bombay Municipal Corporation & Ors.* (1985).¹⁸² Led by PUCL and two journalists, the case was brought at a time when the government began to implement its beautification policies in Bombay (now Mumbai). These policies intended, among other things, to clear the city of slums and send dwellers back to their place of origin.¹⁸³

In support of this beautification measure, the High Court of Maharashtra established an order of eviction for October 15, 1981, but the government began evicting dwellers before then. Consequently, the dwellers' representatives (PUCL and others) appealed to the Supreme Court asking for an injunction against evictions.

The Court ruled in favor of the government and allowed evictions to occur after October 5th, only requiring that those who qualified for alternative accommodation were granted such benefits. Furthermore, while the Court expressed the importance of the right to life by stating it "essential that the procedure prescribed by law for depriving a person of his fundamental right, must conform to the means of justice and fair play,"¹⁸⁴ it also clarified the extent to which the right should be considered, by saying, "The Constitution does not put an absolute embargo on the deprivation of life or personal liberty."¹⁸⁵ Thus, while the Court acknowledged the right to life, it reinforced the importance of standards established by the state to maintain order and beauty.

Another PIL case decided around this time was that of *Shantistar Builders Vs. Narayan Khimalal Gotame and Others* (1990). As stipulated by the Urban Land Ceiling Regulation Act of 1976, the state of Maharashtra allowed construction corporations to access "excess" land if, in exchange, they agreed to allocate some of the homes built for poor people (in this act, referred to as "the weaker economic sections"). Respondents argued that the builders were not meeting the condition of their construction license because housing for this group of people was not being provided (nor affordable). In the course of its judgment, the Court noted that "basic needs of man have traditionally been accepted to be three – food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation and live in."¹⁸⁶ The court ordered the State government to develop clear guidelines on the implementation of the program, including a clear definition of who makes up the weaker sections of the population. The court also ordered the government to monitor implementation of the policy to ensure that housing under this policy is given to the weaker sections. As a result, the court forced the state to further formalize its policies and monitoring mechanism.

Almost ten years after *Olga Tellis*' case, *Chameli Singh and others Vs. State of U.P.* (1995) reached the Supreme Court, where the appellants claimed that they owned the land notified by the state of Uttar Pradesh and that the state should not force them out to use it for providing homes to SC/ST people. Again, the court ruled in favor of the State (dismissing the appeal) as long as compensation was provided to the original landowners, and said that "providing house sites to the Dalits, Tribes and the poor itself

¹⁸² *Olga Tellis and Ors. Vs. Bombay Municipal Corporation & Ors.* 1985. The Supreme Court of India. (Writ Petitions 4610-4612 and 5068-5079 of 1981).

¹⁸³ Ibid

¹⁸⁴ Ibid. Pg.5

¹⁸⁵ Ibid. Pg. 25 parr 2.

¹⁸⁶ *Shantistar Builders Vs. Narayan Khimalal Totame and Ors.* 1990. The Supreme Court of India. (Civil Appeal No. 2598 of 1989). Pg. 5.

is a national problem, and a constitutional obligation. So long as the problem is not solved and the need is not fulfilled, the urgency continues to subsist.”¹⁸⁷

A year after this ruling, *Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan & Ors.* (1996) reached the Supreme Court. Here, the Court determined that given that the 29 pavement dwellers seeking help had lived in the premises for a long period of time (and fell within the period for which the scheme supports housing), it was reasonable for dwellers to expect the government to notify them of the eviction. The Court mandated the state of Gujarat to provide alternative housing to the original 29 dwellers and give 21 days for recent unlawful encroachers to leave the area.¹⁸⁸ This case represented one of the first instances where the protection of slum dwellers was prioritized over the plans of the state.

Moreover, in *People's Union for Civil Liberties vs. Union of India (UOI) and Ors.* (2012), the petitioner brought suit to the Supreme Court to claim that a number of states had not met their quota of night shelters for dwellers in need.¹⁸⁹ As a result, many dwellers died of cold weather and other dangerous conditions common when homeless. Consequently, the Supreme Court ruled “Nothing is more important for the State than to preserve and protect the lives of the most vulnerable, weak, poor and helpless people... The State must discharge its core obligation to comply with Article 21 of the Constitution by providing night shelters for the vulnerable and homeless people.”¹⁹⁰ The Court directed the state officials to file affidavits on their night shelters and to ensure that night shelters were provided.¹⁹¹

While this is not an eviction case, it established a mandate to provide alternative shelter for those who have nowhere to go. It also further strengthened the Court’s understanding of what the right to life entails and what the state must do to protect it. The Court, as a result of this PIL, has asked all states to provide night shelters for the homeless, in all urban areas, building one shelter per one lakh population.¹⁹² Even states like Karnataka, which were not part of the case, have been implementing programs to assess homelessness in the state and provide night shelters accordingly. The DMA, for instance, reports on having worked with other public agencies to create 22 shelters, but does not provide a total number for night shelters in Bangalore.¹⁹³

¹⁸⁷ *Chameli Singh and others Vs. State of U.P.* 1995. The Supreme Court of India. (Civil Appeal No. 12122 of 1995). Pg. 15.

¹⁸⁸ *Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan & Ors.* 1996. The Supreme Court of India. (Civil Appeal No. 12992 of 1996).

¹⁸⁹ The Court also said “Consequently, we direct the Collectors and District Magistrates of the States of Jammu & Kashmir, Himachal Pradesh, Uttarakhand, Punjab and Haryana, Rajasthan, Uttar Pradesh and Bihar to file affidavits with their respective Chief Secretaries within three weeks from today in which they must ensure that at least temporary night shelters are provided to protect and preserve the lives of the people in consonance with the constitutional philosophy enshrined in Article 21 of the Constitution. List this matter for further directions on 27th February, 2012.”

Source: *People's Union for Civil Liberties vs. Union of India (UOI) and Ors.* 2012 The Supreme Court of India. (I.A. Nos. 94 and 96 in Writ Petition No. 196 of 2001 and I.A. No. 82/2008 in Writ Petition No. 196 of 2001).

¹⁹⁰ *People's Union for Civil Liberties vs. Union of India (UOI) and Ors.* 2012 The Supreme Court of India. (I.A. Nos. 94 and 96 in Writ Petition No. 196 of 2001 and I.A. No. 82/2008 in Writ Petition No. 196 of 2001). Pg. 6.

¹⁹¹ Ibid. Pgs. 6-14.

¹⁹² “Night Shelters.” 2014. *Directorate of Municipal Administration.*

¹⁹³ Ibid.

Box 4: Using Other Authoritative Venues at the International Level

Slum dwellers and their representatives have also used other international mechanisms to seek justice and advance tenure security. For example, in 2004 the World Bank Inspection Panel received a series of “inspection requests” from civil society groups who claimed that the implementation of the World Bank funded Transportation Project in Mumbai would lead to the resettlement of thousands of people and eviction of many shops. The requesters argued that the practices in place were and would continue to deteriorate the livelihood of the evictees.

Overall the Panel found that the project violated World Bank policy and that there were problems with the planning as well as with the execution of the project. Among the many problems identified, the Panel found that the evaluation done by the WB group was inaccurate and needed an in-depth reassessment. As a result of inaccurate data from the executed evaluations, the respective teams underestimated the effects of the project on thousands of people. This further affected their assessment of what the government would need to provide in order to rehabilitate the affected residents. Because the processes and procedures to deal with these questions had been flawed in their implementation, the Panel found that the WB had not met its stated policy objective to ensure that project-related complaint mechanisms were transparent and objective. Furthermore, the Panel found that the WB also overlooked the degree of project impact on shopkeepers of the area to be used for the transportation project. Lack of consultation with these vulnerable groups was also a problem.

Even though the project had many flaws, using the Inspection Panel led to a series of action plans to address the problems and to violations being identified. To the extent the World Bank is involved in a commercial or public initiative that sets off a chain of events such as evictions of the vulnerable, the Inspection Panel provides a forum in which to challenge the arrangement. Moreover, and aside from the World Bank, advocates of the poor should be inspired to find similar venues when seeking the advancement of the rights of the poor. These might include the UN bodies that review implementation of state obligations under relevant international treaties, including new committees that accept “individual communications” relating to violations of those treaties.

Source: “India: Mumbai Urban Transport Project (IBRD Loan No. 4665-IN; IDA Credit No. 3662-IN).” 2005. *The Inspection Panel Investigation Report*; “Management Report and Recommendation in Response to The Inspection Panel Investigation.” 2006. *Mumbai Urban Transport Project.*; Odello, Marco and Francesco Seatzu. 2013. *The UN Committee on Economic, Social and Cultural Rights*. Routledge Research in Human Rights Law.

Overall, PIL cases have had mixed results. In all cases, slum dwellers being threatened with eviction were the ones accessing the courts, and none of the PILs analyzed were brought by the non-poor. In the High Court of Karnataka, the jurisprudence appears to lend more support to the view that the state has the right to evict as needed, as long as it is in accordance with regulations issued to support evictions, and, accordingly, does not provide many protections for potential evictees. Nevertheless, more recent cases in the High Courts and the Supreme Court have been moving towards a ‘pro-poor’ stand by recognizing the right to shelter as enshrined in the right to life, and requiring more humane practices from the government, when evictions do happen. Still, the battle is ongoing. While the poor and their representatives bring most of these cases to the courts, overall very few cases are litigated, and when they are, many of the judicial decisions note that the ruling is limited to the facts unique to the case at hand. In principle then, the cases cannot be used as precedents.

It should also be kept centrally in mind that the process of litigation is extremely costly and lengthy. For instance, the PUCL case on the right to night shelters essentially began 10 years ago during a drought that left many starving. Although the case began by advocating the right to food, it evolved to include other claims such as the right to shelter.¹⁹⁴ Moreover, obvious and dangerous asymmetries exist between

¹⁹⁴ Anonymous Interview. Civil Society Representative. Karnataka.

the capacity and knowledge of slum dwellers regarding protecting their rights, and the capacities and knowledge of the state and of entities whose interests might generate adverse effects for the poor. Also, the resources of the poor (and their representatives) are greatly outmatched by those they might litigate against including the state and the private sector. Thus, grave challenges remain in regards to the consistency of the recognition and protection of the right to housing and against evictions.

IX. The Case of South Africa

As mentioned early in this paper, housing the poor and protecting people from eviction is a prominent challenge faced in many countries around the world, with urban areas having the most trouble finding sustainable solutions to the challenge. South Africa too faces these problems, but its civil society has managed to unite effectively and advocate for the advancement of the right to housing in a way that few other countries have yet been able to do so. To draw out the valuable lessons to be found in the South African experience, this chapter describes the evolution of various housing movements, and their impact on the ground. It also identifies strategies used in South Africa that can be applied to advance the housing rights agenda in Bangalore.

According to Statistics South Africa, in 2011 Johannesburg had a population of over 4.4 million, followed by Cape Town with over 3.7 million.¹⁹⁵ As the South Africa Informal Settlement Status Report¹⁹⁶ shows, over 1.7 million residents in a country of 51.8 million, live in informal settlements. Many of these dwellers live in informal settlements of Johannesburg and Cape Town.¹⁹⁷

The story behind evictions in South Africa is highly associated with strategies implemented during Apartheid to maintain segregation. However, as Wilson argues, this practice has continued post-Apartheid in both urban as well as rural areas of the country and states, “In the inner city of Johannesburg alone, on a conservative estimate, 10,000 people were evicted from derelict land and buildings between 2002 and 2006.”¹⁹⁸ As a result of increasingly aggressive eviction strategies, vulnerable residents began to mobilize more strategically to fight back.

One such movement was that of the Western Cape Anti-Eviction Campaign (AEC), which resulted from an aggressive attempt to evict Ashraf Cassiem in October 17, 2000. The impact of such an aggressive response had not only reached the media, but also encouraged residents with common concerns to create a unified effort of organizations and communities who wanted change and were ready to advocate for it.¹⁹⁹ To do this, AEC built the capacity of members to do research, strengthen their informal ways of negotiating and expanding their reach (via media and communication training), and resist disconnection from services or attempts towards evictions. These efforts were done collectively through non-violent strategies. Furthermore, in cases where these attempts failed and dwellers got evicted, AEC would help evictees go back to the premises after the evictions and reconnect their homes to basic services (working as “struggle” electricians, plumbers, etc.).²⁰⁰ Even asking government officials to document in writing verbal agreements was a tactic used to make sure that negotiations with public officials were formalized and taken seriously.

¹⁹⁵ “City of Johannesburg.” 2011. *Statistics South Africa*.

¹⁹⁶ “South Africa Informal Settlement Status Report.” 2012. *Housing Development Agency*. ; “People.” *Statistics South Africa*. (2011).

¹⁹⁷ *Ibid*.

¹⁹⁸ Wilson, Stuart. 2011. “Planning for Inclusion in South Africa: The State's Duty to Prevent Homelessness and the Potential of ‘Meaningful Engagement’.” *Urban Forum*. Vol. 22(3). Pg. 2, Par. 1.

¹⁹⁹ Miraftab, Faranak, and Shana Wills. 2005. “Insurgency and Spaces of Active Citizenship: The Story of Western Cape Anti-eviction Campaign in South Africa.” *Journal of Planning Education and Research*. Vol 25: 200.

²⁰⁰ *Ibid*.

Protecting the Right to Housing through the Courts

Another strategy increasingly used by civil society in the country is that of seeking the Courts help. Article 26 of the post-apartheid South African Constitution declares, “(1) Everyone has the right to have access to adequate housing. (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right. (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.”²⁰¹ Taking up this standard, poor people and their representatives have engaged in an impressive amount of formal court proceedings and civic advocacy efforts to protect and expand the right to housing for those in need.

According to Clark and Dugard, prior to the 1996 Constitution, it was far easier to legally evict people from premises, regardless of the distress evictions caused.²⁰² After the new Constitution went into effect, Parliament also enacted the *Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998* (known as the “PIE Act”), which further attempted to protect slum dwellers from eviction. Specifically, the PIE Act stipulates under Section 4 subsection 6 and 7, that the court can make a decision on eviction upon a determination that the eviction is “just and equitable” and after evaluating the relevant circumstances²⁰³ of the occupier.²⁰⁴ Standards like these have allowed pro-poor advocates to more strongly claim and demand protection from slum evictions through the Courts. Out of numerous cases that have been brought to the court, the two most prominent will be described in detail to show tangible examples of how the Courts have responded on the needs of the most vulnerable.

The Government of the Republic of South Africa Vs. Irene Grootboom and Others

In 2000, the Government of the Republic of South Africa brought suit before the Constitutional Court against Irene Grootboom and approximately 900 other dwellers who had been protected by the High Court of Cape Town, which ruled that the government was required to provide them with emergency housing.²⁰⁵ Judge Albie Sachs said on the matter “we decided that however extensive the housing program, and however admirable it was, it was insufficient simply to go in for a massive quantitative advance and claim that accounts for what is required. If some people are left behind in situations of such extreme deprivation that links up with that special need, then the government is not behaving reasonably.”²⁰⁶

The Constitutional Court ruled that having emergency programs for those without any possibility of shelter was reasonable and thus, expected from the state. Consequently, the court supported the dwellers and as Clark and Dugard argue “Grootboom laid a stable foundation for a new order in eviction cases by requiring that ‘at the very least’ evictions had to be conducted ‘humanely’ and by establishing that the state had an obligation to plan for those who would otherwise be rendered homeless by an eviction.”²⁰⁷ While the ruling eventually led to the creation of today’s Emergency Housing Programme in South Africa, and people were reassured of their legal right, in practice, things did not move fast. Eight years after this ruling, Irene Grootboom died in the streets, still awaiting shelter.²⁰⁸ Clearly, this would not be the end of the poor people’s struggle to assert their right to housing. Following

²⁰¹ *Constitution of the Republic of South Africa*. NO. 108, 1996. Pg 9.

²⁰² Clark, Michael, and Jackie Dugard. 2013. “Evictions and Alternative Accommodation in South Africa: An Analysis of the Jurisprudence and Implications for Local Government.” *Socio-Economic Rights Institute of South Africa*.

²⁰³ Circumstances such as whether the occupier has kids, how long has the dweller been living in the premises, what alternative housing it has if evicted.

²⁰⁴ *Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998*. Republic of South Africa.

²⁰⁵ *Ibid*. This was the second socio-economic rights case of the country,

Government of the Republic of South Africa and Others v Grootboom and Others. 2001. (1) SA 46 CC.

²⁰⁶ Sachs, Albie. 2007. “Enforcement of Social and Economic Rights.” *American University International Law Review*. 22 Am. U. Int’l L. Rev. 6732007. Pg. 4, par. 5.

²⁰⁷ Clark, Michael, and Jackie Dugard. 2013. “Evictions and Alternative Accommodation in South Africa: An Analysis of the Jurisprudence and Implications for Local Government.” *Socio-Economic Rights Institute of South Africa*. Pg. 13, par. 1.

²⁰⁸ Joubert, Pearlie. “Grootboom dies homeless and penniless.” *Mail and Guardian*. August 8, 2008.

Grootboom's footsteps, many other cases were brought to the Constitutional Court leading to other 'pro-poor' judgments and the creation of programs such as the Temporary Housing Programme described below.

City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd

The second pro-poor judgment that merits particular analysis here is the 2011 case of the *City of Johannesburg v Blue Moonlight Properties*, which involved 86 people who faced eviction threats from a private location in Johannesburg. The municipality claimed that it was not responsible for evictions that led to homelessness due to private landowner actions.²⁰⁹ Facing eviction threats from the private owners who knew about the dwellers when they bought the land, the encroachers went to the High Court, which ruled that the state was responsible for housing the homeless, regardless of whether they were homeless as a result of private or public evictions. Consequently, the City appealed to the Constitutional Court, which ruled in favor of the dwellers, and directed²¹⁰ that the private owners await patiently to proceed with the eviction until the government could provide alternative housing.

While both cases set strong precedents in the court's jurisprudence to support slum dwellers from becoming homeless as a consequence of evictions, implementation of the rulings have been less consistent and quite inefficient. To attempt to remedy this problem, the Constitutional Court has resorted, in some instances, to imposing penalties on the public officer who fails to comply with Court orders. Indeed, in the event that a public officer chooses not to implement Court orders, the Court may declare this failure unlawful and punish the officer at hand. For instance, in *Mchunu v Executive Mayor of eThekweni*, after the government failed to provide housing for 37 households in a period of a year, the Constitutional Court declared that if the order was not implemented, the municipal officer would be fined and possibly imprisoned.²¹¹ A similar order was made to push for the enforcement of orders issued in the *Blue Moonlight Case*.²¹²

Civil society has become very vibrant in South Africa around litigating constitutional rights, in great part because communities and NGOs have worked together to protect each other from being coerced by outsiders, and to advocate more effectively for their rights. For instance, a representative from an NGO that brings pro-poor cases in South Africa, said that its NGO recently started providing services to defend political and civic rights. The NGO now offers these services to smaller NGOs and CBOs that have been accused of crimes in an attempt from the state to lower incentives for the poor to mobilize.

Overall, civil society in South Africa still has a lot to accomplish in its efforts to protect the poor from being evicted. However, their struggles have been fruitful and helped many. As a result of these efforts, the government has implemented both an Emergency Housing Programme and a Temporary Housing Programme. The Emergency Housing Programme helps people who suddenly (as a result of a factor outside of their control, such as eviction or natural disaster) are left without a home and need assistance in an immediate manner. The Temporary Housing Programme, on the other hand, provides cheap housing for up to a year, and helps households find long-term options in the meantime.²¹³ These programs were mandated by the Courts as a result of brave and unified civic activism that advocates strategically and effectively for the rights of the poor.

South African advocates of the poorest of the poor deploy a number of strategies worthy of exploring in the context of Bangalore. Some of these strategies include mounting systems-challenging litigation,

²⁰⁹ *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another*. 2012. (2) SA 104 (CC).

²¹⁰ Directed in accordance with section 26 of the Constitution and the PIE Act.

²¹¹ Clark, Michael, and Jackie Dugard. "Evictions and Alternative Accommodation in South Africa: An Analysis of the Jurisprudence and Implications for Local Government." *Socio-Economic Rights Institute of South Africa*. 2013

²¹² Tissington, Kate and Stuart Wilson. "SCA upholds rights of urban poor in Blue Moonlight judgment." *ESR Editorial*. 2001. Volume 12 No. 2.

²¹³ *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another*. 2012. (2) SA 104 (CC). Pgs. 37-38.

providing legal support to smaller slum representative groups to ensure that they are not defenseless and easily intimidated by public actors, building the capacity of slum dwellers to know their rights and be able to undertake practices to protect themselves, and advocating for housing programs that provide emergency shelter and assistance in finding a long-term solution to their accommodation problems.

X. Policy Recommendations

The stakeholder analysis of this study shows that few slum dwellers understand their rights, or the benefits as well as the procedures to undertake in order to get “notification” status from the government and get more protection from evictions. Notification remains important because it turns unlawful dwellers into authorized occupants, making it harder for the state to evict as it deems necessary.

NGOs have limited resources and, as a consequence, few of them invest their resources in advocating for notification, which can be lengthy and unpredictable. Others are putting all their resources in PILs, which can be costly and lengthy as well. Most NGOs, however, have vast knowledge of the context, and are working on a large spectrum of poverty alleviation efforts. Furthermore, CBOs do not seem common in unrecognized slums, but slum leaders are prominent.

The government has invested few of its resources in raising awareness of the notification process and it is disputed whether the process of housing security and notification is efficient and/or transparent. Moreover, fair and just processes for eviction are non-existent, and most eviction decisions are left in the hands of a few.²¹⁴ When eviction of unlawful occupants happens, no standards require that the state minimize the damages on the poor. Most importantly, there are few, if any, viable programs to offer emergency housing to those who have no place to go.

Evidently, this development challenge presents a multi-dimensional complex problem where different stakeholders must play a role in addressing. Nevertheless, NGOs in Bangalore have great capacity to improve their efforts to make *demands* in the name of slum dwellers and in doing so, expand their reach and impact in the city with regards to protecting slum dwellers from eviction. Furthermore, while it is outside of the scope of this study to provide solutions to the governments’ identified shortcomings, Appendix A also provides a list of potential recommendations that could be further explored, on how to improve public efforts to *supply*, enforce and secure the right to housing.

Key Considerations

- Maximize financial resources, which are generally limited and allocated to many different and costly initiatives.
- Minimize possibilities for eviction of slum dwellers in Bangalore.
- Improve the transition processes and outcomes for inevitable evictions, to protect dweller’s security and livelihood.
- Protect the environment from potential adverse effects of policy solutions that aim to minimize slum evictions.

Recommendations

1. NGOs should **build the capacity** of slum leaders and any emergent CBOs to pursue housing rights and protect themselves from eviction. CBOs and slum leaders should be trained on notification processes and other related tasks that can help advance the community’s agenda.

²¹⁴ Particularly, and as described in above, for example, the Commissioners of several government organizations have the power to arbitrarily evict slum areas without prior notice.

2. NGOs should **reprioritize** their work, increasing investment of resources in a few specific key areas of work to maximize impact. By implementing recommendation 1, CBOs will take some responsibility away from NGOs, allowing NGOs to **focus** more on implementing specific and complex strategies. Some of these include: i) raising awareness nationally and globally on the vulnerability of slum dwellers, ii) seeking the courts help for the advancement of housing rights as well as safety nets around eviction, and iii) advocating at the central and state levels for the development and actual implementation of ‘pro-poor’ policies, including schemes on night shelters, temporary housing and property rights.

1. Building Capacity

Based on the research presented, NGOs in Bangalore seem overwhelmed with multiple duties and tasks, and lack sufficient resources to effectively implement numerous poverty alleviation strategies effectively. Nevertheless, many NGOs have the knowledge and connections (with slums dwellers) to help build the capacity of slum leaders and CBOs to advocate and demand some services from the government. Some NGOs, have been working on helping notify slums for years. However, NGOs also acknowledge the lengthiness of the process and the resource limitations that prevent them from further facilitating the notification process in all slums.

Thus, generating tools for CBOs and slum leaders, to inform them of the process and procedures to undertake could, in the medium term, lower the NGOs burden and allow dwellers to advocate for their own rights. Tools include sample letters to take to KSDB to add a slum to the consideration list, as well as basic documentation on their rights. Training on notification procedures and the provision of a list of people to whom to talk at public agencies, could further facilitate the process. In regards to the latter, in cases where slum leaders and or representatives are illiterate, oral training will be required to ensure that they understand and learn the necessary information. Most slum dwellers in the worst-off slums have cellphones, which means that if NGOs designate one person to provide additional guidance, slum leaders and CBO representatives could be in constant communication with them through this medium.

Trained CBOs and slum leaders could undertake some processes necessary for notification, registration of voting and ration cards. CBOs or slum leaders can also help spread the word on benefits offered by the government, and guide slum dwellers on how to get them. Getting a voting card, for example, is highly important because it increases incentives of politicians to advocate for the provision of services to slums and lowers their incentives to support evictions. However, few slum dwellers know about or believe in the direct and indirect pressures that such procedures can provide and the power that rests within them.

Evidently, training CBOs and slum leaders can be time consuming in the short-term. It will be particularly challenging in the cases where slums do not have CBOs and NGOs have to promote and build the capacity of the community to mobilize. However, doing so will allow NGOs in the city to shift some duties to other stakeholders, and it will empower slum dwellers in the process. By learning and internalizing their rights and the benefits they can get from the state, slum dwellers should become more active and engaged with the advocacy agenda. It is important though, to be strategic on what to train CBOs and slum representatives on. With very new slums, it might be better to build the capacity and interest in creating a community group, while slums that are unrecognized but have been around for 10 years and have community groups, could benefit more from learning about KSDB’s list for notification and following a plan to get on the list.

There is strength in union, and this should be acknowledged more strongly by NGOs. While each NGO focuses on one or two tasks, all efforts combined can create a massive coalition similar to the South African case. NGOs should not just focus on one strategy, but rather as a conglomerate, should be able

to create a comprehensive movement that tackles the issue from all angles leaving as little space as possible for further violations.

In addition to building the capacity for NGOs in Bangalore to closely collaborate, these NGOs would be well served by reaching out to NGOs working in other cities of India and the world. Creating and taking part in local and international knowledge exchanges will also help NGOs identify new strategies from which to learn. But this sort of coalition approach will only be seen as valuable when individual NGO efforts are recognized as insufficient, and when NGOs understand that they need stronger coalitions in the face of powerful private interests and complex state politics. Thus, although some efforts have been made, greater attempts at unifying fronts and increasing ties among NGOs can lead to a more strategic and influential movement.

2. Reprioritizing NGOs' Agendas

By outsourcing some duties to CBOs, NGOs will be able to focus on specific efforts that require more time and more sophisticated resources. Such strategies include: a) increasing media attention, b) doing Public Interest Litigation, or c) working with the government to draft policies that help slum dwellers acquire security of housing. Choosing the appropriate effort may depend on the NGOs greatest strength. For instance, NGOs such as PUCL and HRLN are focused on promoting justice, raising awareness of housing rights, and defending these rights through the courts. Streamlining activities will also allow NGOs to take a more proactive stand on actually changing the rules of the game, rather than seeking remedies after damages have been done and rights have been violated.

A. Raising Awareness Campaign: Increase attention to the problem of eviction and increase sensitization to the rights of the poor

NGOs can use media and other resources to increase support and pressure the government to increase efforts on securing housing as mandated by the RAY scheme. In order to gather sufficient support, they need the attention of residents at all levels of the city, the country, and the globe. This is challenging, since most of the media continues to portray slum dwellers as criminals and at fault for their own conditions.

Breaking that cycle will require collective media campaigns that change the way people see the problem and sensitize people to the need for change. Getting more celebrities such as Aamir Khan to promote justice, using massive and effective protests (such as peaceful sit-ins), and creating promotional materials that help spread the word, are just one of many strategies that have helped raise awareness and gather support for other similar reforms. For example, in Colombia, activists used interview and video tools to open discussions and portray the struggles and abuses that domestic workers faced.²¹⁵ Media Campaigns have also been instrumental in promoting change and gathering sufficient public support, even in the midst of highly politically controversial reforms such as the Philippine Procurement Reform Bill enacted in 2003.²¹⁶ Thus, investing in initiatives that raise awareness of the human suffering brought on by evictions is key if NGOs want to increase attention that leads to higher demand for a solution to the eviction problem.

It will also be helpful, as part of this awareness campaign, to push for a new “logic” around the relationship of the law to slum dwellers. We have seen how the government argues and some courts agree that unauthorized slum dwellers have no rights or claims for protection. And yet the case must be made—to government actors and to courts—that slum dwellers have needs for extra *legal* protection

²¹⁵ Dudley, Mary Jo. 2003. “Voice, Visibility and Transparency: Participatory Video as an Empowerment Tool for Colombian Domestic Workers.” *Participatory Video: Images that Transform and Empower*. SAGE Publications.

²¹⁶ Campos, Jose Edgardo, and Jose Luis Syquia. 2005. *Managing the Politics of Reform: Overhauling the Legal Infrastructure of Public Procurement in the Philippines*. Washington, DC, World Bank.

precisely because they are *not* authorized. If they were authorized, they would not be as vulnerable. In other words, simply designating slum dwellers as illegal will not change the realities of slum dwellers vulnerability; to the contrary, it will just render their situations more precarious.

B. Increase efforts to file PILs

A few NGOs in Bangalore have increased their efforts to seek justice through the courts. This strategy should be at the center of some of the NGO agendas where they have the capacity to execute it properly. In bringing more PILs, attention to the issue will increase and the judiciary will be forced to take a more consistent stand on the right to housing.

It should be understood that increasing the focus on litigation is likely to be complicated as PILs are costly and lengthy. Thus, I suggest that NGOs doing PILs work with the Law Schools in the area, offer internships to law students, and or work together with law clinics around the city. Working with a law clinic entails having the support of a skilled supervising attorney who directs the clinic as well as bright, competitively selected students who are not on the NGO's payroll. This may reduce some of the costs incurred by NGOs, while sensitizing law students to these issues and extending their opportunities to practice law. One such clinic that is already doing work to help people in need at no cost is the Legal Service Clinic of the National Law School of India University in Bangalore.²¹⁷

PILs should not only deal with issues of evictions, but also seek justice on processes inefficiently implemented by the government. For instance, the right to vote, as affirmed by the Constitution, is often violated in cities. Slum dwellers, who do not have proof of residency, or who live as unauthorized occupants, are often not granted to right to vote. As a result, slum dwellers are prevented from exercising their democratic right to chose who they want to govern them. Consequently, they also have less bargaining power with elected officials, who do not care to please a constituency that cannot reelect them.

Also, these NGOs should explore other venues that can increase justice for the poor. For instance, many respondents mentioned how sometimes, the state evicts slum dwellers to develop projects funded by development institutions such as the World Bank.²¹⁸ In this case, NGOs can call upon the Inspection Panel of the World Bank to investigate the claim and make decisions accordingly. Indian NGOs have used this mechanism before and should continue to use it as they see fit.

C. Representing the poorest slum dwellers interests in the drafting of policies and bills

NGOs should work with the government, to ensure that the interests of the poorest slum dwellers are attended to in the new policies being crafted, such as the national bill on property rights for slum dwellers. This is an arduous task, as different types of slums have different needs, and thus “one-policy-fits-all” approach will not be effective in helping the heterogeneous poor. These NGOs can focus on being the voice of the poorest of the poor dwellers, through the use of sound empirical data, exchanges with dwellers, as well as the results of other NGOs work. Appendix A, which describes recommendations for the government, identifies areas where NGOs can work to represent the voice of the poorest and influence the reform agenda. These areas include, pushing for faster court proceedings that decide on collective cases (PILs), advocating for housing programs (such as the Temporary Housing Programme in South Africa) that provide alternatives for those who cannot housing programs, and promoting policies that increase protection of slum dwellers from eviction.

²¹⁷ Currently, this clinic assists the poor by providing free legal advice and assistance to those who need it, on issues related labor rights, domestic violence, and minority rights. Available at: <http://legalservicesclinic.wordpress.com>

²¹⁸ Anonymous Interviews. Civil Society Representatives. Karnataka.

XI. Conclusion

This study of slum evictions in Bangalore reveals many shortcomings in the policy as well as the implementation side of so called development strategies. The central government has yet to recognize the existing limitations of the most deprived and the different needs of the poor. No policy or standards for eviction processes have been implemented at the national level to increase the protection from the potential harm that this practice causes slum dwellers. As a result, their right to life is violated arbitrarily and endlessly. Moreover, at the state level, high inefficiencies result in low quality of housing and a slow notification process. Also, *who* benefits from these programs remains unclear, and findings suggest that the beneficiaries are not the ones with the most urgent need. To the contrary, those with the most deprived conditions are the ones who remain unrecognized by the government and are thus, highly vulnerable to evictions.

Civil society has become more vibrant but still lacks the unity and resources necessary to effectively compete with other powerful actors (such as the private sector) that have divergent agendas, and successfully advocate for the rights of the poor. Moreover, the media also plays a key role in the projection and representation of slum dwellers lives and their needs.

While PILs have led to advancements of shelter and the security of tenure, no legal terrain is ever certain. Decisions are not always consistent. Pro-poor doctrines take great effort to build and yet can be abandoned. The legal representatives of the poor always need to play both offense and defense—looking for ways to protect the most vulnerable, whether the policy and legal environment is favorable or not.

The battle—legal, political and social—is ongoing and thus requires innovative strategies and united fronts. Empowering communities on how to advocate for their rights is very important. Building the capacity of the communities to do this will increase the mobilization efforts, add pressure on the government to address shortcomings, and allow NGOs to reprioritize their efforts on specific strategies that are more complex and time-consuming, but that have the potential to further help advance the agendas of the poor.

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XII. Appendix A: Recommendations for Public Institutions

At the Central Government Level:

1. The Schemes should acknowledge the funding limitations that some slum and pavement dwellers have. While some dwellers can allocate a greater portion of their income into housing and basic services, many are unable to do so at the level stipulated in the RAY scheme.
2. Programs similar to the Temporary Housing Programmes should be established to provide shelter and help recent migrants and/or evictees find housing alternatives other than living in the streets.
3. Schemes should institutionalize at the national level, the recent Court mandate of providing night shelters, to account for such needs and allocate funding to it.

At the State and Municipal Level:

1. Improve the capacity of employees to deal with the current challenges of KSDB. Train staff to use existing resources and technologies (such as the slum GIS system) to significantly reduce time spent in some field activities. In doing so, staff can then spend more time on notifying slums and providing services to declared slums. A potential training actor able to train KSDB staff would be the officers developing GIS in the DMA.
2. Increase investment of raising awareness initiatives. Having 3 staff members assigned to work on raising awareness of the notification process, all of which have multiple responsibilities besides the latter, is insufficient. Given the current budget increase, KSDB should be able to allocate additional resources to undertake an effort to expand its information dissemination programs and assign personal to focus solely on this task. Efforts should also include adding information in their website on the process of notification, the benefits, and accountability mechanisms to be used by the community when concerns arise. BBMP, for instance, has a larger pool of resources and its work reaches a large segment of the Bangalore population. Thus, it is in a suitable venue to help KSDB spread the word on notification, the process and its benefits.
3. BBMP should increase funding allocated to shelter the people in most desperate need.
4. KSDB and other public actors, in collaboration with NGOs and CBOs representing the needs of slum dwellers, should work on drafting a bill that stipulates tenure rights for slum dwellers and increase the protection from evictions. Opening a forum for increased communication between actors would be key in creating more ‘pro-poor’ policies.
5. Government lawyers at the city and state levels should be instructed to avoid legal strategies that pivot on the unauthorized nature of slum dwellers’ occupancy. Indeed slum dwellers have needs for extra legal protection *precisely* because they are *not* authorized. If they were authorized, they wouldn’t be vulnerable.

XIII. Appendix B: Interview Survey Samples

Questionnaire for Public Officials (2013)

Basic Information

1. Date of Meeting: _____
2. Name of person conducting the interview: _____
3. Name of person being interviewed _____
4. Interviewee's Professional Position: _____
5. Name of Organization: _____

About the Organization

6. Please provide general information on your organization, its structure, mandate, and procedures:
7. Describe your position/role within the organization (How long have you been in this organization? What are your responsibilities within the organization? How do you execute them? Who reports to you? What are your relationships with external stakeholders? Who do you contact the most and for what reason? Also, who would you like to contact but not doing so right now? Why?)

The Notification Process

8. How does the government identify slums?
9. What is your knowledge in regards to the notification process of slums? What is a declared versus an undeclared slum? What are the criteria for each category?
10. What happens to a slum once it is declared? What happens to those that remain undeclared?
11. How long does the notification process take on average? _____
12. **(For KSDB)** How are people living in slums informed of the notification process? Who provides legal/procedural advice (within KSDB/ULBs as well as outside of KSDB)?
13. In your opinion, why do slum dwellers want to declare a slum? What do they gain or lose from this process?
14. **(For KSDB)** Can the threat of eviction speed the notification process? Why?
15. Are evictions of slum dwellers legal? What is the legal procedure for this process?
16. Do you know of eviction cases? Please describe
17. **(For KSDB & BBMP)** What happens if a slum is sitting in private land?

About your Agency

18. What, if any, are the responsibilities of your organization towards non-notified and notified slums? What about slums that are not part of the slum list?
19. How does your agency fulfill the responsibilities described above?

20. How do you prioritize which slums to serve first? Do they have to be notified?
21. Does your agency have an office for resident's complaints and or appeals? How does it function?
22. As you know, many urban local bodies (ULBs) provide similar services to slums. Do you communicate and coordinate the provision of these services between each other? If yes, how?
23. In your opinion, what is the biggest constraint you face when it comes to implementing development projects in the slums?

Property Rights

24. Can you provide some general information on what land tenure and property rights slum dwellers can aspire to obtain and how these rights have changed as a result of new government housing schemes (such as RAY)?
25. Do you issue any property rights for slum dwellers?
26. If yes, what are the criteria and what is the process for granting/receiving hakku patra and other property titles?
27. Who raises awareness on this process?

Questionnaire for Non-Public Officials

Basic Information

1. Date of Meeting: _____
2. Name of person conducting the interview: _____
3. Name of person being interviewed: _____
4. Professional Position: _____
5. Name of Organization: _____

About the Organization

6. Please provide general information about your organization, its structure, mandate, and implementation process:
7. Describe your position/role within the organization (How long have you been in this organization? What are your responsibilities within the organization? How do you execute them? Who reports to you? What are your relationships with external stakeholders? Who do you contact the most and for what reason? Also, who would you like to contact but not doing so right now? Why?)

The Notification Process

8. What is your knowledge in regards to the notification process of slums? What is a declared/notified slum and what is a non-notified/undeclared slum? What are the criteria for notification?
9. Are there any other factors involved that affect whether a slum becomes notified (and the time it takes)? If yes, please describe.
10. How long does the notification process take on average?
11. Does your organization have access to the KSDB list of slums? If yes, is this list complete?
12. Are slums informed about the registration process? Who informs them of this process and its benefits?
13. In your opinion, why do slum dwellers want to declare a slum? What do they gain or lose from this process?
14. What, if any, services do you provide in regards to the registration process?
15. What other organizations provide technical/legal assistance on the registration process? Do you work with them?
16. In general, are dwellers aware of this process? Do they collectively act towards this goal? Are they successful when they approach KSDB or BBMP?
17. What common differences or concerns arise when they go through the notification process?
18. What is your knowledge about slum evictions? Does your work involve protecting slum dwellers from getting evicted? If yes, how do you do this?

19. Do you know of any NGOs involved in public interest litigation to help protect slum dwellers from eviction?
20. What are the limitations of NGOs and CBOs in their efforts to protect slum dwellers from eviction? What could they do better?

Service Delivery (Gov.)

21. As you know, many urban local bodies (ULBs) provide services to slums? What is your opinion in regards to these bodies and their efforts to improve conditions in slums? What are their strengths and shortcomings?
22. Why do some slums resist housing or construction by government?

Property Rights

23. Can you provide some general information on what land tenure and property rights slum dwellers can aspire to obtain and how these rights have changed as a result of new government housing schemes (such as RAY)?
24. What are the criteria and what is the process for granting/receiving hakku patra and other property titles?
25. Who raises awareness on this process? How?

XIV. Appendix C: Public Interest Litigations Analyzed for India' Section on Housing Rights

High Court Cases Analyzed

1. *Murugan and Ors. Vs. Dept. of Housing and Urban Development and Ors.* (2003)

[MANU/KA/0757/2003](#)

Equivalent Citation: AIR2004Kant171, 2004(1) KCCRSN63

IN THE HIGH COURT OF KARNATAKA

Writ Petn. Nos. 2104 to 2204 of 2001

Decided On: 11.08.2003

Appellants: **Murugan and Ors.** Vs. Respondent: **Dept. of Housing and Urban Development and Ors.**

Hon'ble Judges/Coram: [D.V. Shylendra Kumar](#), J.

Counsels: For Appellant/Petitioner/Plaintiff: [M.S. Ramachandra Rao](#), [C. Ramamurthy](#) and [V. Krishnan](#), Advs.

For Respondents/Defendant: [M.N. Ramanjaneya Gowda](#), Adv. for Nos. 1 and 4, [N.S. Sanjay](#), Adv. for No. 2 and [Prakash Ramaiah](#), Adv. for No. 3

Subject: Civil

Acts/Rules/Orders: Railway Act, 1989 - Section 147(2); Constitution of India - Article 226

Disposition: Petition dismissed

Case Note : CONSTITUTION OF INDIA-Articles 226 and 227-KARNATAKA SLUM AREAS (IMPROVEMENT AND CLEARANCE) ACT, 1973-Section 3-Petitioners claimed to be slum dwellers in Railway property for more than 40 years. The Notification under the Act showed that the area declared as slum was not Railway property but private property. Railway claimed that the petitioners were not in occupation of any property belonging to Railway and Railway has not evacuated the petitioners but had put up compound around its property. **Held :** When possession of the petitioners in respect of any portion of the Railway property was not proved and the same has been denied by Railway, writ jurisdiction cannot be invoked to decide disputed facts. **Writ Petitions dismissed.**

ORDER

D.V. Shylendra Kumar, J.

1. Petitioners claim to be residents of Channapatna town who have put up their huts near the railway line and the area where they have been fixed their tents has come to be known as "Dr. Ambedkar Railway Platform Slum" and also known as "Tamilian Colony Railway Plat Form" and there were about 800 such persons living in the area and there are about 140 huts or houses. It is also claimed that the Karnataka Slum

Clearance Board who is impleaded as 3rd respondent to this writ petition has declared the area where the petitioners are residing as a slum area as per Section 3 of the Karnataka Slum Area (Improvement and Clearance) Act, 1973 (for short 'the Act'). Petitioners claim that they have been living in the huts put up by them for the past several years, that their names figured in the voters list of the area coming under Channapatna Legislative and Channapatna Parliamentary constituency, that they have been so occupying the place for about 40 years or above and their possession had not been disturbed by any other authority or person so far and when the matter stood thus the 2nd respondent, Divisional Manager, Bangalore Division, Southern, Railways, Bangalore had trespassed into the area on 9-1-2001 without even as much a notice to the petitioners, had demolished some of the structures belonging to them in the area, that the 2nd respondent has acted in a high handed manner and without even consulting or interacting with the 3rd respondents Slum Clearance Board has interfered with the living of the petitioners, that the 2nd respondent by putting forth an untenable stand and proposition that the Railway Authorities have right to remove any person from the property which belongs to railways if such person is found on the railway premises, by virtue of the powers conferred to the authorities under Section [147\(2\)](#) of the Railway Act, that in the guise of exercising such power the 2nd respondent has subjected the petitioners to great hardships, difficulty and interfered with their peaceful possession and enjoyment of the property, where they have been living for the past several decades, their peaceful possession is threatened, that in some earlier, writ petitions where railway authorities had sought to take law into their own hands to that of the petitioners, the authorities have been restrained by the orders passed by this Court from taking such action except in accordance with due process of law, that the petitioners are entitled to similar relief in these petitions also.

2. Statement of objections has been filed on behalf of the 2nd respondent. Petition averments are denied and disputed. It is also asserted that the writ petitions itself are not maintainable as all the petitioners are not residents of "Tamilian Colony" as claimed. It is also asserted that the petitioners are suppressing material facts and have filed writ petitions with false and incorrect statements. It is disputed that the petitioners are living in the area known as Tamilian Colony for the past four decades. The voters list copy of the year 1995 copy of which is produced as Annexure C does not contain the names of the petitioners, that it does not at any rate establish the petitioners stay for the past four decades etc. This respondent has denied that it has either trespassed into any portion of the said Tamilian Colony or has demolished any huts or house or building located in the said Tamilian Colony and the only action which is admitted on the part of the 2nd respondent is that they have put up a compound wall surrounding the railway properties and as this is the only action that they have taken question of 2nd respondent having trespassed into the Tamilian Colony or demolishing houses of the residents in that area does not arise is what is claimed by the 2nd respondent. It is also asserted that the Tamilian Colony which exists adjacent to the railway property has never been claimed by the railway authorities and that the railway property has all along been in the possession of the railway authorities, that no part of the railway property has been notified as a slum area, that the action of putting up a compound wall on the boundary of the railway property is to protect the property that it is very essential and valid and it is also claimed that the reliance placed by the petitioners on- the judgment of Single Bench and also of the Division Bench referred to in Annexure-D and E respectively to these petitions have no relevance to the facts of the present case and this respondent has prayed for disposal of the writ petition.

3. While the petitioners claim that the 2nd respondent has been interfering with the possession and enjoyment of their huts and houses which are located in the area known as slum area called as Tamilian Colony railway platforms the 2nd respondent has denied this and has disputed such averment. The 2nd respondent has asserted that it was never notified by the Slum Clearance Board under the Act and it was never put in the possession and enjoyment of any of the residents in the slum area which is known as Tamilian Colony. The very notification produced by the petitioner copy at Annexure-E purporting to have been issued by Slum Clearance Board under Section 34 of the Act indicates that the said Tamil Railway platform is in a private ownership that it measures near 26 guntas comprising about 140 huts with the population of 800.

4. It is not possible for this Court to examine the correctness or otherwise for such disputed facts as asserted by the petitioner and as denied by the 2nd respondent. The 2nd respondent has asserted that they had put up

only a compound wall in the area belonging to the railway authorities, that the notification issued under Section 3 of the Act does not indicate that any portion of the railway property has been declared as a slum area.

5. In the circumstances the decision relied upon by the petitioners namely Annexure-D and E are of 110 assistance to the petitioners in the present case. When once the possession of the petitioners in respect of any portion of the railway property is not demonstrated and which has been declared as a slum area there is no question of this Court examining the issue further and issuing a protective order in favour of the petitioners to restrain the 2nd respondent from taking action against the petitioners in any manner other than by due process of law in the exercise of writ jurisdiction by this Court.

6. If the 2nd respondent has put up a compound wall on the boundaries of its property it cannot be characterised as an illegal or unauthorised action or an act by which the 2nd respondent is trying to take law in their own hands or trying to over reach any provisions of law.

7. I do not find any merit in the petitions and accordingly the writ petitions are dismissed.

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2. *Smt. Chandra Bai and Ors. Vs. Special Deputy Commissioner and Ors. (2007)*

[MANU/KA/7149/2007](#)

Equivalent Citation: 2007(3) KCCRSN157

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Writ Petition 17403/2001

Decided On: 24.01.2007

Appellants: Smt. Chandra Bai W/o Narasoji Rao (since dead, by her LRs. Sri R. Narasoji Rao S/o Ravoji Rao, Sri. N. Harish Minor by guardian his father R. Narasoji Rao and Smt. N. Komala Bai W/o Sri Srinivasa Rao) and Sri. M. Manjunath S/o Sri S. Mannoji Rao Vs. Respondent: Special Deputy Commissioner and Ors.

Hon'ble Judges/Coram: [H.V.G. Ramesh](#), J.

Counsels: For Appellant/Petitioner/Plaintiff: [Ravivarma Kumar](#), Sr. Counsel for [N.K. Ramesh](#), Adv.

For Respondents/Defendant: [Ramesh B. Anneppanavar](#), AGA for R1, [Prakash Ramaiah](#), Adv. for R2 and R4, [K. Tharanath Shetty](#), Adv. for R7 and [H.K. Shetty](#), Adv. for R8-20

Subject: Property

Catch Words

Mentioned IN

Acts/Rules/Orders: Slum (Improvement and Clearance) Act, 1974 - Section 3

Disposition: Petition dismissed

Case Note: Property - Illegal Occupation - Respondents forcibly took possession of property occupied by petitioner from several years - Hence, present petition - In case of civil disputes related to illegal occupation, parties are required to establish their right in respect of disputed property and obtain appropriate order - Facts revealed that respondents established their rights in Court in respect of suit property - Petitioners being unable to prove their ownership and title over the property removed from the same under due execution of law - Petitioners prayer for injunction rightly rejected - Petition dismissed

Ratio Decidendi: *“Whenever there is wrong it will be redressed by the Courts on establishing such right and also under the assistance of the court, the possession would be given back to the holder of right and title over the property.”*

ORDER

H.V.G. Ramesh, J.

1. In this petition, petitioners have sought for issuance of a writ of certiorari to quash the order of the 1st respondent dated 8.10.1998 -annexure E and to issue a writ in the nature of mandamus to direct respondents 1 to 4 to restore status quo ante in respect of the petitioners' property and to pay damages and also to direct the 7th respondent / CBI to take up investigation in the matter and to bring the guilty to books.

2. According to the 1st petitioner, they were said to be in possession of property bearing No. 174/2 measuring 30 x 40 ft. situate at Cottonpet Main Road, Bangalore exercising the act of ownership from the past several years. The said property was earlier in the possession of his predecessor in interest namely one Yelloji Rao and on his death, the petitioner continued with the possession and his father was carrying on the business in the name and style of Lakahmi Furniture Works and then as an electrical contractor and later, a provision stores.

3. Similarly, the 2nd petitioner also was in possession of the adjoining property at 174/3 measuring 30 x 40 ft. In that, 2nd petitioner was carrying on the scrap business besides bottle cleaning and gunny bags dealing. By virtue of a notification 3.3.1989, 14 guntas of the Chattha number 90 was declared as shun area exercising power under Section 3 of the Slum (Improvement & Clearance) Act, 1974. The notification was called in question by one Muniswamy & others in WP 20988/1989 and connected matters and this Court by order dated 8.10.1998, quashed the said notification and remanded the matter back to the 1st respondent with a direction to conduct a joint enquiry and to take appropriate action in respect of the entire extent of land including the 14 1/4 guntas of land. After the matter was remanded, the 1st respondent without ascertaining as to the actual possession and without notifying the occupants, having concluded the enquiry, declared 14 % guntas out of 1 acre as slum area. Thereafter, the 2nd and 3rd respondent colluding with each other, on 4.4.2001 employed the services of Policemen and without any prior notice, demolished the properties of the petitioners without even giving an opportunity for removing the articles and also petitioners were not permitted to take photos of the demolition process. Thereafter, on verification it was learnt that the 1st respondent in exercise of his powers had directed the eviction in respect of 25 % guntas of land out of 1 acre in Chalta Number 90 and to hand over the same to the owners of the land. Hence, this petition challenging the order made at annexure E and for such other relief as noted above.

4. The 1st respondent and others have filed objections resisting the petition.

5. The contesting respondents have stated that the petitioners have deliberately made a false and misleading statement to harass the contesting respondents and to knock off the valuable property belonging to respondents 8 to 20. It is stated, although the petitioners do not have such documents in support of the said allegation, they have not disclosed the nature of the alleged possession, the property belongs to respondents 8 to 20 and bears old Corporation No. 143 & 144 (New No. 141 & 142) at Cottonpet Main Road having its boundaries and originally the property belonged to the ancestors of the respondents. The property mentioned by the petitioners in their schedule do not tally with the schedule of the property belonging to the respondents nor is it even part and parcel of the property of the respondents. The boundaries disclosed are totally different As such, the property claimed by the petitioners has nothing to do with the property belonging to respondents 8 to 20. It is further submitted that neither the petitioners nor their predecessors were in possession of the property stated by them. As per the documents, in the order of the Court in execution proceedings at annexure, the petitioners were ordered to be removed and dispossessed through the process of court as such, the respondents are in possession since 16.7.1973 in Ex Case No. 862/1973 arising out of HRC 323/1971 and also the Original Suit filed by the predecessor of the petitioners in OS 1761/1973 and 1757/73 came to be dismissed. Further, according to the objections filed by 1st respondent, by Government order dated 17.1.1997, One acre of land situate in Cottonpet Main Road in Municipal No. 141 & 142 is declared as shun area. Again by notification dated 30.12.1997, the aforesaid area which was covered under the notification was cancelled and a fresh notification came to be issued declaring 14 1/2 acres as slum area out of 1 acre of land. This notification was challenged by the residents before this Court in WP 31898/1981. The petition was dismissed on 25.5.1982 holding that the slum dwellers have no locus standi and the writ appeal filed against the said order also came to be dismissed However, in SLP before the Supreme Court, the matter was remanded back to provide an opportunity to the shun dwellers. However,

another notification dated 3.3.1989 was issued by the Special Deputy Commissioner declaring 14.1/4 guntas of land in question as slum area. After former development, after hearing the slum dwellers, the Special Deputy Commissioner issued a notification dated 12.4.2000 reserving 14.1/4 guntas of land as slum area for rehabilitation of shun dwellers. Since the Slum Clearance Board has not taken any action to clear the slums, owners of the land in question made representation for taking action to evict the unauthorised occupants in the remaining area of 25.3/4 guntas. It is stated further, at the time of execution by the Task Force all the habitants were present except the petitioners as they were not in occupation of any portion of the aforesaid property. It is stated further, on 3.4.2001, the 1st respondent and others went to the spot and convinced the unauthorised occupants who voluntarily removed their materials from the said land on 4.4.2001. The temporary tents and sheds were demolished and the lands were handed over on 4.4.2001 to the owners of the land. Ever since, 4.4.2001, the owners are in occupation and enjoyment of roe same.

6. Similarly, the 2nd respondent has also filed objection statement.

7. Heard the counsel for the respective parties and the learned Government Advocate.

8. It is the submission of the learned Senior Counsel appearing for the petitioners that the 1st respondent has no right to pass an order to evict the petitioners much less he cannot act on behalf of the owners of the land and the order passed by the 1st respondent directing the 2nd respondent and others to evict the petitioners was illegal as he has no authority nor the area in question is covered under the declared area of Slum. As such, it is submitted that without authority of law, only to help the owners, such an act has been done which is illegal and the said act cannot be sustained.

9. Further, learned Sr. counsel also submitted that after the execution of decree and taking possession of the property by the owners of the land as is observed by the order of the Civil Court, once again the petitioners have occupied the property and though it is illegal, the 1st respondent has no authority to pass the order directing the other respondents to remove the petitioners and it has to be done under due process of law. Accordingly, he sought for quashing annexure E the order passed by the 1st respondent and to restore status-quo ante.

10. Per contra, Government Advocate has justified the order passed by the 1st respondent and submitted that the order passed by the respondent authority is in consonance with the directions of the Government in removing the unauthorized/unlawful occupation and creating slums and former submitted mat a detailed order has been passed after joint inspection of the land in question along with the authorities of the Karnataka Shun Clearance Board. The petitioners were in wrongful possession and unauthorised occupation adjacent to the area which is declared as slum area and the authorities have exercised power as per the entitlement of the land owners following due procedure and the same cannot be found fault with. When once the petitioners were evicted under due process of law, if the 1st respondent authority has passed such an order to remove the unauthorised occupation of the petitioners by virtue of the special power vested in it as a legal obligation in the interest of law and order, the same cannot be found fault with.

11. Learned Counsel for the contesting owners/respondents vehemently submitted that under due process of law the property was taken in execution of the decree. Thereafter, once again the petitioners have unlawfully occupied the property belonging to the respondents and it is nothing but lawlessness on the part of the petitioners and they have not approached the court with clean hands and they have no locus-stand to maintain the petition. It is former submitted that mere illegal possession after they have been duly evicted in execution of the decree will not confer any right or tide to the petitioners. The petitioners are duly evicted from the property under the authority of law as per the order passed by the Deputy Commissioner in exercise of his powers to maintain law and order and the same cannot be found fault with as it was for the respondents to approach the Deputy Commissioner who being the head of the District, exercising legal and quasi judicial powers, has passed an appropriate order. It is also contended that by virtue at the execution of the order at annexure E, the respondents have taken possession since 4.1.2001 wherein they are in

possession and occupation of the same, and the question of considering the case of the petitioners or for grant of status-quo ante does not arise. Accordingly, it was vehemently contended that it is the highhandedness of the petitioners that led to the deprivation of legitimate right of the respondents in enjoying their property for all these days and there is no illegality in the order passed by the Special Deputy Commissioner at annexure E. Further, it is submitted that the property in question is not at all the property on which the petitioners have right As there is a dispute as to the title, the extent and the boundary thereof, the same cannot be gone into in the writ proceedings as it involves disputed question of facts.

12. Having heard the respective counsel, let me consider whether the impugned order at annexure E requires to be interfered with.

13. In the instant case it is noticed that the contesting respondents having established their rights in the civil court are said to have taken possession of the property from the persons who have originally occupied the property either legally or illegally, under due execution of the decree of the Court. It appears thereafter, the petitioners have also moved the Civil Court seeking for an order of injunction by tiling original suits in OS 1761 & 1757/1973 for a declaration and injunction. The Civil Court having observed that after the premises was taken back by the owners under due process of law, these petitioners have forcibly occupied the suit premises held that the possession of the plaintiffs in respect of the premises/property is unlawful. Of course, despite the fact of the petitioners continuing in occupation of the property as stated by them and also in the suit filed by them before the civil court, the Civil Court has categorically stated that once they have been evicted under due process of law, question of either granting declaration or injunction to them does not arise. Accordingly, the suit filed by the petitioners or their predecessors were dismissed during the year 1976. Thereafter, it appears, having failed in their attempt the petitioners in a high handed manner, sought to continue in possession of the property illegally. When they approach the court of law seeking for appropriate relief, they must approach with clean hands. Normally, as a matter of fact in case of civil disputes when once some illegal occupation is there, under the due process of law as law contemplates, people are required to take shelter to establish their right and obtain an appropriate order. Accordingly, the contesting respondents have made their efforts to establish their right and title over the property. The petitioners being neither the owners nor having title to the property have attempted to establish their right despite they were removed from the property under due execution of law.

14. What the law contemplates is to protect the interests of the person. Whenever there is wrong it will be redressed by the Courts on establishing such right and also under the assistance of the court, the possession would be given back to the holder of right and title over the property. Despite the same, when such repeated wrongful act is done, the question that would arise would be whether on every such attempt, the aggrieved person has to move the court helplessly and obtain a paper decree which of course will be futile if it is not properly implemented. Allowing such subsequent illegal acts as is in the case of the petitioners amount to supporting the case of perpetuating illegality which is not expected when we resort to the rule of law. Might be that the contesting respondents would have approached the Deputy Commissioner who is the head of the Executive of the District who can also protect the right of the persons as in the case of establishing a civil right and in case of unlawful acts/criminal acts to extend remedy to maintain law and order, by using police force which has to act according to the situation. In the case on hand, when the Deputy Commissioner being the person concerned with maintenance of law and order and he also being concerned with the right to exercise the power to protect the interest of the citizens on such complaining of the illegal acts and if some orders are being passed, and may be the same has been recognised under law or not, but, as long as there would be some justification for such acts, such acts cannot be interfered with unless the acts are shown to be either motivated or prejudicial. It appears by directing the 2nd respondent or some other authorities, the 1st respondent ordered for removal of the petitioners from the property on the ground of unauthorised occupation. Although the said act is not supported by any specific law, he being an authority of the Government, supported the cause of the persons to take possession of the same as per the Government Notifications, the same cannot be held to be bad. Allowing such unauthorised occupation either by the persons with might or under the guise of pleading the need under the guise of seeking protection amounts to recognising some illegal acts and extending misplaced sympathy. Even after exercising due procedure when

a person is ordered to be removed from the property, unless that order is set aside by the superior courts and also when in execution of the decree, possession was taken, once again asking the owners or title holders to go to court of law is nothing but abuse of process of law.

15. In the present case, although the order passed at annexure E by the 1st respondent to some extent seems to be irregular, but while exercising power under the authority of law, such an act cannot be held to be illegal and the same does not require interference as the said act has been done in furtherance of exercising lawful duty in protecting the interest and rights of the citizens.

16. Further, it has to be noted that there is said to be dispute as to the identity of the property and the boundaries mentioned therein which involves question of disputed facts and cannot be gone into in exercising writ jurisdiction more so, when the petitioners have not approached the court with clean hands and as early as on 4.4.2001, the contesting respondents were put back in possession. In the event if any such order is passed, it leads to multiplicity of litigation much less depriving the right and title of the holders.

17. It appears the Government order dated 17.1.1977 declares total one acre of land inclusive of the area in question at Cottonpet Main Road in Municipal No. 141 & 142, as slum having regard to the condition and to take positive steps to remove the slum and to effect improvements to maintain cleanliness. However, due to some resistance and developments, out of 1 acre, 14 1/4 guntas was only notified as slum and the remaining 25 3/4 guntas was excluded. According to petitioners, the act of 1st respondent in directing the 2nd respondent - Board to take steps to remove the slum should have been only in respect of 14 1/4 guntas. However, even in the remaining area wherein petitioners were said to be in occupation, were removed which is illegal. However, as noted above, as contended by the contesting respondents, the extent and boundaries of the alleged possession by the petitioners vary with the boundary mentioned by the respondents. Further, petitioners are shown to have illegally occupied the place in a high handed manner though they were once evicted by execution of the court decree. The Civil Court also dismissed the case of the petitioners for an injunction and declaration. Even though there is little irregularity in the order of the 1st respondent, the same cannot be adjudicated in the writ proceedings having regard to the facts and circumstances of the case.

18. For the foregoing reasons, petition is dismissed. No costs.

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3. Smt. Jayanthi and Ors. Vs. State of Karnataka and Ors. (2013)

[MANU/KA/1624/2013](#)

Equivalent Citation: 2013(4) AKR 857, 2014(1)KarLJ291

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Writ Petitions 32882-32903/2013 (KLR)

Decided On: 07.08.2013

Appellants: **Smt. Jayanthi and Ors. Vs.** Respondent: **State of Karnataka by its secretary Department of Revenue and Ors.**

Hon'ble Judges/Coram: [Huluvadi G. Ramesh, J.](#)

Counsels: For Appellant/Petitioner/Plaintiff: Sri [Ravishankar D.R.](#), Adv., Lex Nexus

For Respondents/Defendant: Smt. [M.C. Nagashree](#), GP

Subject: Civil

Catch Words

Mentioned IN

Acts/Rules/Orders: Code of Civil Procedure, 1908 (CPC) - Section 89; Constitution Of India - Article 14, Constitution Of India - Article 21; Karnataka Land Revenue Act, 1964 - Section 192(A)

Case Note: Civil - Allotment of land - Whether Petitioners were in occupation of government land as unauthorised occupants or they were in occupation pursuant to allotment under Ashraya Scheme - Held, it was found that if issue/problem of removal of encroachment of government land and clearance of slum so as to provide suitable environment for healthy living to poor and needy is not serious issue, Court was afraid which is other matter more serious than this one - However, it was made clear problem of unauthorised occupation and unhealthy growth over government land/tank area and development of slums in and around towns and cities not only in City but in other Cities in State, is serious problem and its removal and to rehabilitate slum dwellers has to be taken care of by Government on war footing basis in view of various contingencies and to strengthen hands of officers in field in process of execution - Petition disposed of.

ORDER

Huluvadi G. Ramesh, J.

1. Petitioners who are in all, 22 have been granted land/sites by the Tahsildar in Sy. No. 64 under Ashraya Scheme in the year 1991-92. The gomal land was utilised for distribution of house sites under the said Scheme as per GO HD 535 KHB 91. The Ashraya Committee invited applications for grant of house sites to eligible persons and hakku patras were issued in the year 1992. Pursuant to that, petitioners have put up construction and have also been provided with sanitary, electricity and water connection by the concerned

authorities way back in the year 1995. By a preliminary notification gazetted on 27.11.1991, an extent of 13.30 acres is notified as slum area under S. 3 of the Slum Clearance Act, 1973. Sketch was also drawn and survey was conducted to declare the area as slum area. An extent of 6.06 acres was shown as tank and an extent of 13.30 acres was shown as proposed slum area. By a notification dated 18.3.2005, an extent of 13.30 acres is declared as slum area. On 29.09.2011, the Tahsildar concerned issued a notice to initiate proceedings under S. 94(3) and before instituting proceedings under S. [192\(A\)](#) of the Karnataka Land Revenue Act, notice was issued treating the occupation of land by the petitioners as unauthorised to which the petitioners gave a reply with all relevant documents for having been granted benefit under the Ashraya Scheme, for having put up construction and extension of civic amenities to the residents who have put up construction. Despite the reply furnished, further action was sought to be taken through the Task Force. In that circumstance, some persons approached this Court in WP 4246-78/2013 and this Court has passed an interim order of stay initially. Meanwhile, on the report of the Tahsildar, during February 2013 Deputy Commissioner has passed an order, notwithstanding the fact that the question whether petitioners are in occupation of the government land as unauthorised occupants or they are in occupation pursuant to allotment under Ashraya Scheme having not been decided by the authority competent to decide the matter. According to the petitioners' counsel, the maps which are produced along with the writ petition clearly depict that 13.30 acres was declared as slum area and sites were allotted under Ashraya Scheme but subsequently the respondent Deputy Commissioner, even without securing the report from the Tahsildar, proceeded to initiate action against the petitioners despite the fact that they are not in unauthorised occupation and the area has been declared as slum area on the area being notified for acquisition to an extent of 13.30 acres for distribution/allotment of sites to the beneficiaries under the Ashraya Scheme showing the remaining extent of 6.06 acres as tank/pond.

2. The main contention of the petitioners is, the sketch drawn by the survey authority is not in respect of the area concerned and is also not in consonance with the google imagery at annexure K. According to him, abutting survey nos. 116 & 117, houses are put up under the Ashraya Scheme. It is his contention, to protect some vested interests, the entire sketch has been prepared which is contrary to the picture shown in the google imagery. The tank area consists only 6.06 acres even as per the original records and there is no encroachment. However, the opinion of the Deputy Commissioner depending upon the tampered sketch that there is stagnation of water in the area, adjacent to that there is construction and this construction is unauthorised, is without properly verifying the records.

3. According to the government pleader, the land in question is gomal land and also a tank is situate there. As such, the Deputy Commissioner has taken a decision to declare that petitioners are in unauthorised occupation of this tank area and there is no illegality in the order passed.

4. Having heard the counsel for the respective parties it is noticed that way back in the year 1991-92, under S. 3 of the Slum Clearance Act, area to an extent of 13.30 acres has been notified and sites have been allowed to various beneficiaries under the Ashraya Scheme. As per the stand of the petitioners, one Yadalan Subbaiah Shetty's family has been granted 40 acres of land around the tank area out of which in Sy. No. 24, the said family has been given 22 acres. Further according to the petitioners' counsel, without verifying the records and without taking into consideration the reply given by the petitioners even before securing the report either from the subordinate revenue authority like the Tahsildar, impugned order has been passed at annexure Q. In the earlier writ petitions filed, the respondent authorities were asked to secure the reply to the notice issued and thereafter, to take a decision. If at all the respondent authority intends to take action to protect tank area which according to them, has been encroached upon, let them have recourse to proper survey and taking into consideration the earlier allotment made way back in the year 1991-92 by the Slum Clearance Board declaring the area as slum as per S. 3 of the Act. Thereafter, if there is encroachment than the area which is acquired to the extent of 13.30 acres, to that extent after issuing due notice to persons who are in occupation either legally or unauthorisedly, earmarking the boundaries and after hearing the grievance of such aggrieved persons, pass necessary orders to take action according to law. If there are unauthorised occupants on the government land/tank area, they may be evicted in accordance with law.

5. It is disheartening to note that around City Corporations, Municipal Corporations and Town Municipalities, revenue land are being unauthorisedly occupied by persons who came in search of avocation for their livelihood which ultimately will be developed into slums. The tragedy is such encouragement for development of slums ultimately leads to multifarious problems, not only the pathetic condition of slum dwellers from the point of their health, rather it reflects our culture and casualness on the part of administration, both bureaucratic and political. The sensitivity involved is, safety of the people and citizens who live in townships. Because of uncertainty in the matter of security on account of slums developed in the midst of city, there is possibility of radical crimes like theft, robbery and even attack on female folk, molestation and attempt to commit rape from unidentified persons whose whereabouts will not be known. In the 21st century, the growth of slums in and around cities reflect the poor standard of living apart from this being highlighted at international level, which is more a concern of human right and violation of international human rights in UN Chapter. Even Art. [21](#) of the Constitution guarantees fundamental right to every citizen to lead life with dignity with proper/well developed accommodation, otherwise it will be in clear violation of Art. [14](#) of the Constitution by the State either due to inaction or abuse and also the Directive Principles of State Policy to provide proper environment for such people, as a matter of maintenance of law and order on the part of bureaucrats not to encourage unhealthy growth in the surroundings of cities and towns by curbing growth of slums and evacuating the unauthorised occupants on revenue lands (government lands). Unless Political Will is there in the matter, it is difficult to proceed without initiating stern action in maintenance of law and order by bureaucrats in the field. The unhealthy growth surrounding cities will have a bearing on the safety of city dwellers apart from spreading of contagious diseases due to unhygienic living conditions. As goes the saying prevention is better than cure, it is the primary concern of bureaucrats and the government in power to react to the situation to lead towards healthy development of cities and towards progress in stead of casual approach. In this regard seriousness on the part of the Executive (administration) is very much required not only to implement things in letter but in spirit. Otherwise, unauthorised occupation of government lands by way of slums will become a problem in course of time, it will become incorrigible unless proper steps are taken.

6. It is also pertinent to note, unless political heads strengthen the hands of Executive bureaucrats in matter of maintenance of law and order, in the matter of clearance of slums and provide safety from the point of health and security, any attempt in this regard by an officer in the field with responsibility would not be effective.

7. The power of judicial review and independence of judiciary is the basic structure of our Constitution. In exercise of power of judicial review often it is necessitated to take judicial note of inaction on the part of the Executive from the point of administration and issue necessary directions for proper implementation and execution. The State being a major litigant, if basic problems are solved radically, litigation will be reduced at the threshold.

8. Innovation of new methods for resolving disputes at the threshold by introducing S. [89](#), CPC like arbitration, conciliation, mediation, judicial settlements and lok adalats is to speed up the process of resolving the disputes. In camera proceedings are held in Chambers in family disputes to resolve the matter as a matter of maintaining privacy. Judges are participating and presiding over lok adalats and other forums of settlement to simplify the procedure of legal system and to resolve the disputes at an early date.

9. If an issue/problem of removal of encroachment of government land and clearance of slum so as to provide suitable environment for healthy living to the poor and needy is not a serious issue, I am afraid which is the other matter more serious than this one. However, it is made clear the problem of unauthorised occupation and unhealthy growth over government land/tank area and development of slums in and around the towns and cities not only in Bangalore City but in other Cities in the State, is a serious problem and its removal and to rehabilitate the slum dwellers has to be taken care of by the government on a war footing basis in view of the various contingencies noted above and to strengthen the hands of the officers in the field in the process of execution.

10. The impugned order at annexure Q is quashed. It is for the respondent authorities to reconsider the issue after securing reply from the petitioners and others aggrieved and also taking into consideration the observation made above. Copy of this order be made available to the Lokayukta/Upa Lokayukta for information and necessary action. Petitions are disposed of accordingly.

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4. Smt. Satyavva Vs. Hubli Dharwad Municipal Corporation by its Commissioner (2011)

[MANU/KA/1122/2011](#)

Equivalent Citation: ILR 2011 KARNATAKA 2004, 2011(61)KarLJ2004, 2011(4)KCCR2844

IN THE HIGH COURT OF KARNATAKA AT DHARWAD CIRCUIT BENCH

W.P. No. 60976/2011

Decided On: 21.02.2011

Appellants: **Smt. Satyavva Vs.** Respondent: **Hubli Dharwad Municipal Corporation by its Commissioner**

Hon'ble Judges/Coram: [S. Abdul Nazeer](#), J.

Counsels: For Appellant/Petitioner/Plaintiff: Sri. [V.M. Sheelavant](#), Advocate

For Respondents/Defendant: Sri [G.I. Gachchinamath](#), Advocate

Subject: Civil

Subject: Property

Acts/Rules/Orders: Slum Areas (improvement And Clearance) Act, 1956 - Section 3, Slum Areas (improvement And Clearance) Act, 1956 - Section 3(1)

Case Note: MUNICIPAL CORPORATION ACT, 1976 - SECTION 288-D--Steps taken by the Commissioner to demolish the unauthorized sheds put up on the land earmarked for park in the Comprehensive Development Plan--No dispute as to the fact that the Petitioners have unauthorisedly occupied the lands and put up sheds and have been living in the sheds--Applicability of the provisions of Section 288-D--HELD, The provisions of Section 288-D of the Act is not applicable to the facts of the case because the petitioners are not in occupation of any wall, fence, rail, step, booth or other structure or fixture which causes obstruction in public streets or any stall chair, bench, box ladder, bale or any other thing whatsoever prohibited under Sections 288-A and 288-B of the Act. Sub-Section (c) of Section 288-D has also no application to the facts of this case. The petitioners are in occupation of the land reserved for park. Section 288-D of the Act cannot be pressed into service for taking possession of the land in unauthorized occupation of the petitioners. Thus, the impugned notices have been issued without jurisdiction.--FURTHER HELD, The fact remains that the petitioners are in possession of the area reserved for development of a park in a Comprehensive Development Plan. No one has the right to make use of a public property for a private purpose without the requisite authorization. When the land is earmarked for a particular purpose, it cannot be used for any other purpose.--It is not in dispute that the petitioners belong to the weaker section of the society and their eviction would result in deprivation of roof over their head. Even if the petitioners are granted an opportunity of being heard, no useful purpose will be served because admittedly, they are in unauthorized occupation of the civic amenity site meant for a public purpose.--The State Government has been implementing various schemes for the poor and the downtrodden such as Ashraya scheme, Aasare scheme and Rehabilitation scheme Flood Victims etc. The intention behind all these schemes is to alleviate poverty and to provide shelter to the needy. This is a fit case where the respondent and other concerned Authorities have to take steps to rehabilitate the slum dwellers like the petitioners.--

Till the alternative arrangement for rehabilitation of the petitioners as above is made, they shall not be evicted from their sheds/huts. Writ Petitions are Disposed of.

ORDER

Abdul Nazeer, J.

1. Since common question of law and fact are involved in all these cases, they are clubbed together, heard and disposed of by this common order.

2. The petitioners contend that they are occupying different portions of land bearing Sy.No.36A of Unkal Village, Hubli Taluk, Dharwad District. They have put up small sheds/huts on the said land and have been residing in those sheds for the past 30 to 35 years. The Hubli-Dharwad Municipal Corporation (for short the "Corporation") has assigned corporation number to their huts and it has been collecting taxes from them. The area in question has been declared as a slum area under Section [3](#) of the Slum Area (Improvement and Clearance) Act, 1956. The petitioners have produced the tax paid receipts issued by the Corporation. The Forest Contractors and Timber Merchants' Association Limited, Hubli, filed a petition before this Court in Writ Petition No. 12420/2006 for a mandamus directing the Corporation to develop the said land reserved for park and to establish fire brigade as per the approved plan bearing No.DEV.ACQ.SR.52 dated 20/12/1970 (for short 'the Layout Plan') and to prevent the 3rd parties from encroaching the said land. Though the petitioners are in possession of different portions of the said land, they were not made parties to the said writ petition. This Court by an order dated 22/02/2010 directed the Corporation to develop the land within a period of six months from the date of receipt of copy of the order. On the basis of the said order, the Corporation has issued notices to the petitioners to demolish the sheds/huts and vacate the land. It is further stated in the notices that if the petitioners fail to demolish the sheds/huts and vacate the land, the same will be demolished by the Corporation. Therefore, the petitioners have filed these writ petitions for quashing of the said notices.

3. The Corporation has filed its statement of objections contending that it has not assigned any permanent numbers to the hutments. The number given to the hutments is to facilitate the conducting of the census; the land in question is earmarked for park and open space in the comprehensive development plan. Unless there is a change of the land use, no person can lay a claim to the said land. The notice issued under Section [3\(1\)](#) of the Slum Area (Improvement and Clearance) Act 1956 is without notice to the Corporation. Though the said notice was issued on 19/12/2001, no further steps have been taken so far. The Corporation has taken steps to demolish the sheds/huts in view of the direction of this Court in Writ Petition No. 12420/2006 dated 11/02/2010. It is further contended that immediately after the receipt of the order, the Executive Engineer of the Corporation, has directed the Assistant Commissioner, Zonal Office to conduct survey of the area, in order to implement the said order. In furtherance of the said order, the Assistant Commissioner, Zonal Office No.5, along with his team has visited the spot and demarcated the encroached area so as to demolish the unauthorised sheds/huts constructed thereon. Thereafter, an order was passed by the Commissioner of Corporation dated 27/01/2011 under Section 288-D of the Act for demolition of the unauthorised sheds/huts put up on the lands. Pursuant to the said order of the Commissioner, impugned notices have been issued to the petitioners calling upon them to demolish the sheds/huts unauthorisedly put up by them and to vacate the said land.

4. I have heard the Learned Counsel for the parties.

5. Learned Counsel for the petitioners would contend that though the land was earmarked for park and open space in the Comprehensive Development Plan, the petitioners/their predecessors have put up sheds/huts on the said land long ago and they have been residing in their respective sheds/huts for the past 30-35 years. The Corporation has assigned numbers to their sheds/huts and it has been collecting tax from them. The petitioners are not made parties to the Writ Petition No. 12420/2006, though they are in possession of the

land. The petitioners are from weaker section of the society and they are not in a position to make any alternative arrangement for their residence. They were not heard before passing of the impugned orders. If the petitioners are rehabilitated elsewhere, they are ready to vacate their respective sheds/huts.

6. On the other hand, Learned Advocate appearing for the respondent submits that the land in question was reserved for park in the Comprehensive Development Plan. It cannot be used for any other purpose without there being an order for change of land use in accordance with law. The petitioners have unauthorisedly put up sheds/huts. The numbers assigned by the Corporation to the sheds/huts of the petitioners is temporary in nature in order to facilitate conducting of census. The respondents have no other option but to implement the order passed by this Court in Writ Petition No. 12420/2006 dated 22/02/2010. That is why the Commissioner of Corporation has passed an order under Section 288-D of the Act dated 27/01/2011 for demolition of the sheds/huts. In furtherance of the said order, the impugned notices have been issued to the petitioners.

7. I have carefully considered the arguments of the Learned Counsel made at the Bar and perused the materials placed on record.

8. It is evident from the materials on record that under the Comprehensive Development Plan dated 20/12/1970 at Annexure R-7, the land in question has been reserved for park. It is also not in dispute that the petitioners have unauthorisedly occupied the said land, put up the sheds/huts thereon and have been living in those sheds/huts. The petitioners contend that they have been living in their sheds/huts for the past 30 years. However, the contention of the respondent is that the encroachment has taken place subsequent to the year 2000. Be that as it may. The petitioners have produced materials to show that the Corporation has assigned corporation numbers to the sheds/huts in question and it has been collecting tax. Some of the petitioners have produced the tax paid receipts issued by the Corporation evidencing payment of property tax. It is also clear that the Slum Clearance Board has issued a Notification Under Section [3\(1\)](#) of the Act dated 19/12/2001 declaring the area in question as a slum area. However, no further proceedings have been initiated pursuant to the said Notification. Thus, it is clear that the petitioners have been in possession of the land in question for the past several years. The petitioners were not made parties to Writ Petition No. 12420/2006. In the said case, the Corporation has sought reasonable time to develop the area. On the basis of the submission made on behalf of the Corporation, this Court has passed an order directing it to develop the area in question for the purpose for which it was reserved. In pursuance to the said order, the Commissioner has passed an order as per Annexure R-6 under Section 288-D of the Act for demolition of the sheds/huts in question on the basis of which the corporation has issued the impugned notices to the petitioners to demolish their huts/sheds without granting them any opportunity to show cause as to why their huts should not be demolished.

9. Section 288-D of the Act authorises the Corporation to remove encroachment without notice. It is as under:

Section 288-D: Commissioner may without notice remove encroachment.-Notwithstanding anything contained in this Act, the Commissioner, may, without notice, cause to be removed.-

(a) any wall, fence, rail step, booth or other structure or fixture which is erected or set up in contravention of the provisions of Section 288-A;

(b) any stall, chair, bench, box, ladder, bale or any other thing whatsoever, placed or deposited in contravention of Section 288-B;

(c) any article, whatsoever, hawked or exposed for sale in any public place or in any public street in contravention of Section 288-C and any vehicle, package, box, board, shelf or any other thing in or on which such article is placed, or kept for the purpose of sale.

10. The above provision is not applicable to the present case because the petitioners are not in occupation of any wall, fence, rail, step, booth or other structure or fixture which causes obstruction in public streets or any stall chair, bench, box ladder, bale or any other thing whatsoever prohibited under Sections 288-A and 288-B of the Act. Sub-Section (c) of Section 288-D has also no application to the facts of this case. The petitioners are in occupation of the land reserved for park. Section 288-D of the Act cannot be pressed into service for taking possession of the land in unauthorised occupation of the petitioners. Thus, the order at Annexure-R-6 dated 27.1.2011 and the impugned notices have been issued without jurisdiction. Though the Slum Clearance Board has issued notices under Section 3(1) of the Slum Area (Improvement and Clearance) Act, 1956 dated 19.12.2001, no further action has been initiated in furtherance of the said notice. Thus, the said notice has lost its efficacy.

11. The fact remains that the petitioners are in possession of the area reserved for development of a park in a Comprehensive Development Plan. No one has the right to make use of a public property for a private purpose without the requisite authorisation. When the land is earmarked for a particular purpose, it cannot be used for any other purpose. Though the Comprehensive Development Plan is of the year 1970, it is not understandable as to why the authorities responsible for implementing the plan, have not taken steps to develop the park. Explanation is not forthcoming from the respondent as to why it has allowed the said area to be occupied by the petitioners which has virtually become a slum. It is not in dispute that the petitioners belong to the weaker section of the society and their eviction would result in deprivation of roof over their head. Even if the petitioners are granted an opportunity of being heard, no useful purpose will be served because admittedly, they are in unauthorised occupation of the civic amenity site meant for a public purpose. The said land is meant for creation of convenience to the public at large. We have to find a solution to the problem. Human compassion must soften the rough edges of justice in all situations. In *OLGA TELLIS AND OTHERS vs. BOMBAY MUNICIPAL CORPORATION AND OTHERS*¹, the Apex Court was considering the action of the Bombay Municipal Corporation to remove encroachments on foot-path, pavements and open space over which the public have a right of passage or access. In the said decision, the Apex Court has held as under:

However despite holding Section 314 valid, in terms of the assurances given by the State Government in its pleadings before the Court, it is directed that the pavement dwellers who are censused or who happened to be censused in 1976 should be given though not as a condition precedent to their removal, alternate pitches at Malavani or, at such other convenient place as the Government considers reasonable but not further away in terms of distance; slum dwellers who were given identity cards and whose dwellings were numbered in the 1976 census must be given alternate sites for their re-settlement before eviction; slums which have been in existence for a long time, say for twenty years or more, and which have been improved and developed will not be removed unless the land on which they stand or the appurtenant land, is required for a public purpose, in which case, alternate sites or accommodation will be provided to them; the 'Low Income Scheme Shelter Programme' which is proposed to be undertaken with the aid of the World Bank will be pursued earnestly; and the 'Slum Upgradation Programme (SUP)' under which basic amenities are to be given to slum dwellers will be implemented without delay. Highest priority must be given by the State Government to the re-settlement of these unfortunate persons. In order to minimize the hardship involved in any eviction, it is directed that the slums, wherever situated, will not be removed until one month after the end of the current monsoon season, that is, until October 31, 1985 and, thereafter, only in accordance with the present judgment. If any slum is required to be removed before that date, parties may apply to the Supreme Court. Pavement dwellers, whether censused or uncensused, will not be removed until the same date, namely, October 31, 1985.

12. The State Government has been implementing various schemes for the poor and the downtrodden such as Ashraya scheme, Aasare scheme and Rehabilitation scheme Flood Victims etc. The intention behind all these schemes is to alleviate poverty and to provide shelter to the needy. This is a fit case where the respondent and other concerned authorities have to take steps to rehabilitate the slum dwellers like the petitioners. There is no point in summarily evicting them and demolishing their sheds/huts which will only aggravate the problem. At the same time, we cannot lose sight of the fact that the planned development of the city is imperative. Therefore, I am of the view that the petitioners have to be rehabilitated in some other

place. Learned Counsel for the petitioners has no objection for the same.

13. Therefore, I direct the Commissioner of the respondent-Corporation to convene a meeting of the Commissioner, Hubli-Dharwad Development Authority, Chairperson, Dharwad of the Zilla Panchayat, Dharwad, the Corporator who represents the area, the Mayor of Hubli-Dharwad Municipal Corporation. The elected representatives of the people from Hubli-Dharwad should also be invited to the meeting so that effective steps can be taken to solve the problem at hand and to take steps to rehabilitate the petitioners and other similarly placed persons occupying the land in question. The respondent is directed to identify the lands for the rehabilitation of the petitioners and shift them to the said place. Till the alternative arrangement for re-habilitation of the petitioners as above is made, they shall not be evicted from their sheds/huts. The meeting as above shall be convened by the respondent within three months from the date of receipt of copy of this order. Re-habilitation of the petitioners and other similarly placed persons residing in Sy.No.36A of Unkal Village shall be completed within a period of six months from the date of receipt of a copy of this order. The order dated 27.1.2011 (Annexure-R6 in W.P.No.60976/2011) and the impugned notices in all the cases are hereby quashed. Writ petitions are disposed of accordingly. No costs. © Manupatra Information Solutions Pvt. Ltd.

Supreme Court Cases Analyzed

1. *Olga Tellis and Ors. Vs. Bombay Municipal Corporation & Ors. (1985)*

MANU/SC/0039/1985

Equivalent Citation: AIR1986SC180, 1985(2)SCALE5, (1985)3SCC545, [1985]Supp2SCR51

IN THE SUPREME COURT OF INDIA

Writ Petitions Nos. 4610-4612 and 5068-5079 of 1981

Decided On: 10.07.1985

Appellants: Olga Tellis and Ors.

Vs.

Respondent: Bombay Municipal Corporation and Ors.

AND

Appellants: Vayyapuri Kuppusami and Ors.

Vs.

Respondent: State of Maharashtra and Ors.

Hon'ble Judges/Coram:

Y.V. Chandrachud, C.J., A. Vardarajan, O. Chinnappa Reddy, S. Murtaza Fazal Ali and V.D. Tulzapurkar, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Indira Jaisingh, Rani Jethmalani, Anand Grover and Sumeet Kachhwaha, Advs. in W.P. No. 4610-12 of 1981 and Ram Jethmalani, Adv. in W.P. Nos. 5068-79 of 1981

For Respondents/Defendant: L.N. Sinha, Attorney General, P. Shankaranarayanan and M.N. Shroff, Advs. for Respondent Nos. 2 and 3 in W.P. Nos. 4610-12 of 1981 and for Respondent Nos. 1 and 3 in W.P. Nos. 5068-79 of 1981, K.K. Singhvi, F.N.D. Mollo, Advs. for Respondent No. 2 in W.P. No. 5068-79 of 1981

Subject: Constitution

Catch Words

Mentioned IN

Acts/Rules/Orders:

Constitution of India - Article 14, Constitution of India - Article 15, Constitution of India - Article 16, Constitution of India - Article 19, Constitution of India - Article 19(1), Constitution of India - Article 21, Constitution of India - Article 22, Constitution of India - Article 25, Constitution of India - Article 29,

Constitution of India - Article 32, Constitution of India - Article 37, Constitution of India - Article 39, Constitution of India - Article 41; Indian Penal Code, 1860 (IPC) - Section 441

Authorities Referred:

Ramaswamy Iyer's 'Law of Torts' 7th Ed.; Salmond and Heuston, 'Law of Torts', 18th Ed.

Case Note:

Constitution - fundamental right - Articles 14, 19, 21, 32, 37, 39 and 41 of Constitution of India and Sections 312, 313 and 314 of Bombay Municipal Corporation Act, 1888 - petition seeking direction against Government Order regarding demolition of dwelling units of petitioners - petitioners contended that provisions of Act of 1888 specially Section 314 ultr vires Constitution of India - Section 314 empowered Municipal Commissioner to cause to be removed encroachments on footpaths or pavements over which public have right of passage of access without notice to affected persons - Court observed that Section 314 cannot be read to mean that Commissioner must cause removal of encroachment without issuing previous notice - Section 314 or other provisions of Act of 1888 held not to be unreasonable or violative of Article 21 as no person has right to encroach on footpaths pavements or other place reserved for public purpose by erecting structure on it - State Government assured Court that alternative would be provided to slum dwellers who were caused to be evicted - Ordered accordingly.

JUDGMENT

Y.V. Chandrachud, C.J.

1. These Writ Petitions portray the plight of lakhs of persons who live on pavements and in slums in the city of Bombay. They constitute nearly half the population of the city. The first group of petitions relates to pavement dwellers while the second group relates to both pavement and Basti or Slum dwellers. Those who have made pavements their homes exist in the midst of filth and squalor, which has to be seen to be believed. Rabid dogs in search of stinking meat and cats in search of hungry rats keep them company. They cook and sleep where they ease, for no conveniences are available to them. Their daughters, come of age, bathe under the nosy gaze of passers by, unmindful of the feminine sense of bashfulness. The cooking and washing over, women pick lice from each other's hair. The boys beg. Menfolk, without occupation, snatch chains with the connivance of the defenders of law and order; when caught, if at all, they say : "Who doesn't commit crimes in this city?"

2. It is these men and women who have come to this Court to ask for a judgment that they cannot be evicted from their squalid shelters without being offered alternative accommodation. They rely for their rights on Article 21 of the Constitution which guarantees that no person shall be deprived of his life except according to procedure established by law. They do not contend that they have a right to Live on the pavements. Their contention is that they have a right to live, a right which cannot be exercised without the means of livelihood. They have no option but to flock to big cities like Bombay, which provide the means of bare subsistence. They only choose a pavement or a slum which is nearest to their place of work. In a word, their plea is that the right to life is illusory without a right to the protection of the means by which alone life can be Lived. And, the right to life can only be taken away or abridged by a procedure established by law, which has to be fair and reasonable, not fanciful or arbitrary such as is prescribed by the Bombay Municipal Corporation Act or the Bombay Police Act. They also rely upon their right to reside and settle in any part of the country which is guaranteed by Article 19(1)(e).

3. The three petitioners in the group of Writ Petitions 4610-4612 of 1981 are a journalist and two pavement dwellers. One of these two pavement dwellers, P. Angamuthu, migrated from Salem, Tamil Nadu, to Bombay in the year 1961 in search of employment. He was a landless labourer in his home town but he was rendered jobless because of drought. He found a job in a Chemical Company at Dahisar, Bombay, on a daily

wage of Rs. 23 per day. A slum-lord extorted a sum of Rs. 2,500 from him in exchange of a shelter of plastic sheets and canvas on a pavement on the Western Express Highway, Bombay. He lives in it with his wife and three daughters who are 16, 13 and 5 years of age.

4. The second of the two pavement dwellers came to Bombay in 1969 from Sangamner, District Ahmednagar, Maharashtra. He was a cobbler earning 7 to 8 rupees a day, but his so-called house in the village fell down. He got employment in Bombay as a Badli Kamgar for Rs. 350 per month. He was lucky in being able to obtain a "dwelling house" on a pavement at Tulsiwadi by paying Rs. 300 to a goonda of the locality. The bamboos and the plastic sheets cost him Rs. 700.

5. On July 13, 1981 the then Chief Minister of Maharashtra, Shri A.R. Antulay, made an announcement which was given wide publicity by the newspapers that all pavement dwellers in the city of Bombay will be evicted forcibly and deported to their respective places of origin or removed to places outside the city of Bombay. The Chief Minister directed the Commissioner of Police to provide the necessary assistance to respondent 1, the Bombay Municipal Corporation, to demolish the pavement dwellings and deport the pavement dwellers. The apparent justification which the Chief Minister gave to his announcement was : "It is a very inhuman existence. These structures are flimsy and open to the elements. During the monsoon there is no way these people can live comfortably."

6. On July 23, 1981 the pavement dwelling of P. Angamuthu was demolished by the officers of the Bombay Municipal Corporation. He and the members of his family were put in a bus for Salem. His wife and daughters stayed back in Salem but he returned to Bombay in search of a job and got into a pavement house once again. The dwelling of the other petitioner was demolished even earlier, in January 1980 but he rebuilt it. It is like a game of hide and seek. The Corporation removes the ramshackle shelters on the pavements with the aid of police, the pavement dwellers flee to less conspicuous pavements in by-lanes and, when the officials are gone, they return to their old habitats. Their main attachment to those places is the nearness thereof to their place of work.

7. In the other batch of writ petitions Nos. 5068-79 of 1981, which was heard along with the petitions relating to pavement dwellers, there are 12 petitioners. The first five of these are residents of Kamraj Nagar, a basti or habitation which is alleged to have come into existence in about 1960-61, near the Western Express Highway, Bombay. The next four petitioners were residing in structures constructed off the Tulsi Pipe Road, Mahim, Bombay. Petitioner No. 10 is the Peoples' Union of Civil Liberties, petitioner No. 11 is the Committee for the Protection of Democratic Rights while petitioner No. 12 is a journalist.

8. The case of the petitioners in the Kamraj Nagar group of cases is that there are over 500 hutments in this particular basti which was built in about 1960 by persons who were employed by a Construction company engaged in laying water pipes along the Western Express Highway. The residents of Kamraj Nagar are municipal employees, factory or hotel workers, construction supervisors and so on. The residents of the Tulsi Pipe Road hutments claim that they have been living there for 10 to 15 years and that, they are engaged in various small trades. On hearing about the Chief Minister's announcement, they filed a writ petition in the High Court of Bombay for an order of injunction restraining the officers of the State Government and the Bombay Municipal Corporation from implementing the directive of the Chief Minister. The High Court granted an ad-interim injunction to be in force until July 21, 1981. On that date, respondents agreed that the huts will not be demolished until October 15, 1961. However, it is alleged, on July 23, 1981, the petitioners were huddled into State Transport buses for being deported out of Bombay. Two infants were born during the deportation but that was set off by the death of two others.

9. The decision or the respondents to demolish the huts is challenged by the petitioners on the ground that it is violative of Articles 19 and 21 of the Constitution. The petitioners also ask for a declaration that the provisions of Sections 312, 313 and 314 of the Bombay Municipal Corporation Act, 1888 are invalid as violating Articles 14, 19 and 21 of the Constitution. The reliefs asked for in the two groups of writ petitions are that the respondents should be directed to withdraw the decision to demolish the pavement dwellings and

the slum hutments and, where they are already demolished, to restore possession of the sites to the former occupants.

10. On behalf of the Government of Maharashtra, a counter-affidavit has been filed by V.S. Munje, Under Secretary in the Department of Housing. The counter-affidavit meets the case of the petitioners thus. The Government of Maharashtra neither proposed to deport any pavement dweller out of the city of Bombay nor did it, in fact, deport anyone. Such of the pavement dwellers, who expressed their desire in writing, that they wanted to return to their home towns and who sought assistance from the Government in that behalf were offered transport facilities up to the nearest rail head and were also paid railway fare or bus fare and incidental expenses for the onward journey. The Government of Maharashtra had issued instructions to its officers to visit specific pavements on July 23, 1961 and to ensure that no harassment was caused to any pavement dweller. Out of 10,000 hutment-dwellers who were likely to be affected by the proposed demolition of hutments constructed on the pavements, only 1024 persons opted to avail of the transport facility and the payment of incidental expenses.

11. The counter-affidavit says that no person has any legal right to encroach upon or to construct any structure on a footpath, public street or on any place over which the public has a right of way. Numerous hazards of health and safety arise if action is not taken to remove such encroachments. Since, no civic amenities can be provided on the pavements, the pavement dwellers use pavements or adjoining streets for easing themselves. Apart from this, some of the pavement dwellers indulge in anti-social acts like chain-snatching, illicit distillation of liquor and prostitution. The lack of proper environment leads to increased criminal tendencies, resulting in more crime in the cities. It is, therefore, in public interest that public places like pavements and paths are not encroached upon. The Government of Maharashtra provides housing assistance to the weaker sections of the society like landless labourers and persons belonging to low income groups, within the frame work, of its planned policy of the economic and social development of the State. Any allocation for housing has to be made after balancing the conflicting demands from various priority sectors. The paucity of resources is a restraining factor on the ability of the State to deal effectively with the question of providing housing to the weaker sections of the society. The Government of Maharashtra has issued policy directives that 75 percent of the housing programme should be allocated to the lower income groups and the weaker sections of the society. One of the objects of the State's planning policy is to ensure that the influx of population from the rural to the urban areas is reduced in the interest of a proper and balanced social and economic development of the State and of the country. This is proposed to be achieved by reversing the rate of growth of metropolitan cities and by increasing the rate of growth of small and medium towns. The State Government has therefore, devised an Employment Guarantee Scheme to enable the rural population, which remains unemployed or underemployed at certain periods of the year, to get employment during such periods. A sum of about Rs. 180 crores was spent on that scheme during the years 1979-80 and 1980-81. On October 2, 1980 the State Government launched two additional schemes for providing employment opportunities for those who cannot get work due to old age or physical infirmities. The State Government has also launched a scheme for providing self-employment opportunities under the 'Sanjay Gandhi Niradhar Anudan Yojana'. A monthly pension of Rs. 60 is paid to those who are too old to work or are physically handicapped. In this scheme, about 1,56,943 persons have been identified and a sum of Rs. 2.25 crores was disbursed. Under another scheme called 'Sanjay Gandhi Swawalamban Yojana', interest-free loans, subject to a maximum of Rs. 2,500, were being given to persons desiring to engage themselves in gainful employment of their own. About 1,75,000 persons had benefited under this scheme, to whom a total sum of Rs. 5.82 crores was disbursed by way of loan. In short, the objective of the State Government was to place greater emphasis on providing infrastructural facilities to small and medium towns and to equip them so that they could act as growth and service centers for the rural hinterland. The phenomenon of poverty which is common to all developing countries has to be tackled on an All-India basis by making the gains of development available to all sections of the society through a policy of equitable distribution of income and wealth. Urbanisation is a major problem facing the entire country, the migration of people from the rural to the urban areas being a reflection of the colossal poverty existing in the rural areas. The rural poverty cannot, however, be eliminated by increasing the pressure of population on metropolitan cities like Bombay. The problem of poverty has to be tackled by changing the structure of the

society in which there will be a more equitable distribution of income and greater generation of wealth. The State Government has stepped up the rate of construction of tenements for the weaker sections of the society from 2500 to 9500 per annum.

12. It is denied in the counter-affidavit that the provisions of Sections 312, 313 and 314 of the Bombay Municipal Corporation Act violate the Constitution. Those provisions are conceived in public interest and great care is taken by the authorities to ensure that no harassment is caused to any pavement dweller while enforcing the provisions of those sections. The decision to remove such encroachments was taken by the Government with specific instructions that every reasonable precaution ought to be taken to cause the least possible inconvenience to the pavement dwellers. What is more important, so the counter-affidavit says, the Government of Maharashtra had decided that, on the basis of the census carried out in 1976, pavement dwellers who would be uprooted should be offered alternate developed pitches at Malvani where they could construct their own hutments. According to that census, about 2,500 pavement hutments only were then in existence.

13. The counter-affidavit of the State Government describes the various steps taken by the Central Government under the Five year Plan of 1978-83, in regard to the housing programmes. The plan shows that the inadequacies of Housing policies in India have both quantitative and qualitative dimensions. The total investment in housing shall have to be of the magnitude of Rs. 2790 crores, if the housing problem has to be tackled even partially.

14. On behalf of the Bombay Municipal Corporation, a counter-affidavit has been filed by Shri D.M. Sukthankar, Municipal Commissioner of Greater Bombay. That affidavit shows that he had visited the pavements on the Tulsi Pipe Road (Senapati Bapat Marg) and the Western Express High Way, Vile Parle (east), Bombay. On July 23, 1981, certain hutments on these pavements were demolished under Section 314 of the Bombay Municipal Corporation Act. No prior notice of demolition was given since the section does not provide for such notice. The affidavit denies that the intense speculation in land prices, as alleged, owes its origin to the High rise buildings which have come up in the city of Bombay. It is also denied that there are vast vacant pieces of land in the city which can be utilised for housing the pavement dwellers. Section 61 of the B.M.C. Act lays down the obligatory duties of the Corporation. Under Clauses (c) and (d) of the said section, it is the duty of the Corporation to remove excrementitious matters, refuse and rubbish and to take measures for abatement of every kind of nuisance. Under Clause (g) of that section, the Corporation is under an obligation to take measures for preventing and checking the spread of dangerous diseases. Under Clause (o), obstructions and projections in or upon public streets and other public places have to be removed. Section 63(k) empowers the Corporation to take measures to promote public safety, health or convenience, not specifically provided otherwise. The object of Sections 312 to 314 is to keep the pavements and foot-paths free from encroachment so that the pedestrians do not have to make use of the streets on which there is heavy vehicular traffic. The pavement dwellers answer the nature's call, bathe, cook and wash their clothes and utensils on the foot-paths and or parts of public streets adjoining the foot-paths. Their encroachment creates serious impediments in repairing the roads, foot-paths and drains. The refusal to allow the petitioners and other persons similarly situated to use footpaths as their abodes is, therefore, not unreasonable, unfair, or unlawful. The basic civic amenities, such as drainage, water and sanitation, cannot possibly be provided to the pavement dwellers. Since the pavements are encroached upon, pedestrians are compelled to walk on the streets, thereby increasing the risk of traffic accidents and impeding the free flow of vehicular movement. The Municipal Commissioner disputes in his counter-affidavit that any fundamental right of the petitioners is infringed by removal of the encroachment committed by them on public property, especially the pavements. In this behalf, reliance is placed upon an order dated July 27, 1981 of Lentin J. of the Bombay High Court, which records that counsel for the petitioners had stated expressly on July 24, 1981, that no fundamental right could be claimed to put up a dwelling on public foot-paths and public roads.

15. The Municipal Commissioner has stated in his counter-affidavit in Writ Petitions 5068-79 of 1981 that the huts near the Western Express Highway, Vile Parle, Bombay, were constructed on an accessory road

which is a part of the Highway itself. These hutments were never regularised by the Corporation and no registration numbers were assigned to them.

16. In answer to the Municipal Commissioner's counter-affidavit, petitioner no. 12. Prafullachandra Bidwai who is a journalist, has filed a rejoinder asserting that Kamraj Nagar is not located on a foot-path or a pavement. According to him, Kamraj Nagar is a basti off the Highway, in which the huts are numbered, the record in relation to which is maintained by the Road Development Department and the Bombay Municipal Corporation. Contending that petitioners 1 to 5 have been residing in the said basti for over 20 years, he reiterates that the public has no right of way in or over the Kamraj Nagar. He also disputes that the huts on the foot-paths cause any obstruction to the pedestrians or to the vehicular traffic or that those huts are a source of nuisance or danger to public health and safety. His case in paragraph 21 of his reply-affidavit seems to be that since, the foot-paths are in the occupation of pavement dwellers for a long time, foot-paths have ceased to be foot-paths. He says that the pavement dwellers and the slum or basti dwellers, who number about 47.7 lakhs, constitute about 50 per cent of the total population of Greater Bombay, that they supply the major work force for Bombay from menial jobs to the most highly skilled jobs, that they have been living in the hutments for generations, that they have been making a significant contribution to the economic life of the city and that, therefore, it is unfair and unreasonable on the part of the State Government and the Municipal Corporation to destroy their homes and deport them : A home is a home wherever it is. The main theme of the reply-affidavit is that " The slum dwellers are the sine qua non of the city. They are entitled to a quid pro quo. "It is conceded expressly that the petitioners do not claim any fundamental right to live on the pavements. The right claimed by them is the right to live, at least to exist.

17. Only two more pleadings need be referred to, one of which is an affidavit of Shri Anil V. Gokak, Administrator of Maharashtra Housing and Areas Development Authority, Bombay, who was then holding charge of the post of Secretary, Department of Housing. He filed an affidavit in answer to an application for the modification of an interim order which was passed by this Court on October 19, 1981. He says that the legislature of Maharashtra had passed the Maharashtra Vacant Land (Prohibition of unauthorised Occupation and Summary Eviction) Act, 1975 in pursuance of which the Government had decided to compile a list of slums which were required to be removed in public interest. It was also decided that after a spot inspection, 500 acres of vacant land in and near the Bombay Suburban District should be allocated for re-settlement of the hutment dwellers who were removed from the slums. A Task Force was constituted by the Government for the purpose of carrying out a census of the hutments standing on lands belonging to the Government of the Maharashtra, the Bombay Municipal Corporation and the Bombay Housing Board. A Census was, accordingly, carried out on January 4, 1976 by deploying about 7,000 persons to enumerate the slum dwellers spread over approximately 850 colonies all over Bombay. About 67 per cent of the hutment dwellers from a total of about 2,60,000 hutments produced photographs of the heads of their families, on the basis of which hutments were numbered and their occupants were given identity cards. It was decided that slums which were in existence for a long time and which were improved and developed would not normally be demolished unless the land was required for a public purpose. In the event that the land was so required, the policy of the State Government was to provide alternative accommodation to the slum dwellers who were censured and possessed identity cards. This is borne out by a circular of the Government dated February 4, 1976 (No. SIS 1176/D. 41). Shri Gokak says that the State Government has issued instructions directing, inter alia, that "action to remove the slums excepting those which are on the foot-paths or roads or which are new or casually located should not, therefore, be taken without obtaining approval from the Government to the proposal for the removal of such slums and their rehabilitation." Since, it was never the policy of the Government to encourage construction of hutments on foot-paths, pavements or other places over which the public has a right of way, no census of such hutments was ever intended to be conducted. But, sometime in July 1981, when the Government officers made an effort to ascertain the magnitude of the problem of evicting pavement dwellers, it was discovered that some persons occupying pavements, carried census cards of 1976. The Government then decided to allot pitches to such occupants of pavements.

18. The only other pleading which deserves to be noticed is the affidavit of the journalist petitioner, Ms. Olga Tellis, in reply to the counter-affidavit of the Government of Maharashtra. According to her, one of the

important reasons of the emergence and growth of squatter-settlements in the Metropolitan cities in India is, that the Development and Master Plans of most of the cities have not been adhered to. The density of population in the Bombay Metropolitan Region is not high according to the Town Planning standards. Difficulties are caused by the fact that the population is not evenly distributed over the region, in a planned manner. New constructions of commercial premises, small-scale industries and entertainment houses in the heart of the city, have been permitted by the Government of Maharashtra contrary to law and even residential premises have been allowed to be converted into commercial premises. This, coupled with the fact that the State Government has not shifted its main offices to the northern region of the city, has led to the concentration of the population in the southern region due to the availability of job opportunities in that region. Unless economic and leisure activity is decentralised, it would be impossible to find a solution to the problems arising out of the growth of squatter colonies. Even if squatters are evicted, they come back to the city because, it is there that job opportunities are available. The alternate pitches provided to the displaced pavement-dwellers on the basis of the so-called 1976 census, are not an effective means to their resettlement because, those sites are situated far away from the Malad Railway Station involving cost and time which are beyond their means. There are no facilities available at Malavani like schools and hospitals, which drives them back to the stranglehold of the city. The permission granted to the 'National center of Performing Arts' to construct an auditorium at the Nariman Point, Backbay Reclamation, is cited as a 'gross' instance of the short-sighted, suicidal and discriminatory policy of the Government of Maharashtra. It is as if the sea is reclaimed for the construction of business and entertainment houses in the center of the city, which creates job opportunities to which the homeless flock. They work therein and live on pavements. The grievance is that, as a result of this imbalance, there are not enough jobs available in the northern tip of the city. The improvement of living conditions in the slums and the regional distribution of job opportunities are the only viable remedies for relieving congestion of the population in the center of the city. The increase allowed by the State Government in the Floor Space Index over and above 1.33, has led to a further concentration of population in the center of the city.

19. In the matter of housing, according to Ms. Tellis' affidavit, Government has not put to the best use the finances and resources available to it. There is a wide gap between the demand and supply in the area of housing which was in the neighbourhood of forty five thousand units in the decade 1971-81. A huge amount of hundreds of crores of rupees shall have to be found by the State Government every year during the period of the Sixth Plan if adequate provision for housing is at all to be made. The Urban Land Ceiling Act has not achieved its desired objective nor has it been properly implemented. The employment schemes of the State Government are like a drop in the ocean and no steps are taken for increasing job opportunities in the rural sector. The neglect of health, education transport and communication in that sector drives the rural folk to the cities, not only in search of a living but in search of the basic amenities of life. The allegation of the State Government regarding the criminal propensities of the pavement dwellers is stoutly denied in the reply-affidavit and it is said to be contrary to the studies of many experts. Finally, it is stated that it is no longer the objective of the Sixth Plan to reverse the rate of growth of metropolitan cities. The objective of the earlier plan (1978-83) has undergone a significant change and the target now is to ensure the growth of large metropolitan cities in a planned manner. The affidavit claims that there is adequate land in the Bombay metropolitan region to absorb a population of 20 million people, which is expected to be reached by the year 2000 A.D.

20. The arguments advanced before us by Ms. Indira Jaisingh, Mr. V.M. Tarkunde and Mr. Ram Jethmalani cover a wide range but the main thrust of the petitioners' case is that evicting a pavement dweller or slum dweller from his habitat amounts to depriving of his right to livelihood, which is comprehended in the right guaranteed by Article 21 of the Constitution that no person shall be deprived of his life except according to procedure established by law. The question of the guarantee of personal liberty contained in Article 21 does not arise and was not: raised before us. Counsel for the petitioners contended that the Court must determine in these petitions the content of the right to life, the function of property in a welfare state, the dimension and true meaning of the constitutional mandate that property must subserve common good, the sweep of the right to reside and settle in any part of the territory of India which is guaranteed by Article 19(1)(e) and the right to carry on any occupation, trade or business which is guaranteed by Article 19(1)(g), the competing

claims of pavement dwellers on the one hand and of the pedestrians on the other and, the larger question of ensuring equality before the law. It is contended that it is the responsibility of the courts to reduce inequalities and social imbalances by striking down statutes which perpetuate them. One of the grievances of the petitioners against the Bombay Municipal Corporation Act, 1888 is that it is a century old antiquated piece of legislation passed in an era when pavement dwellers and slum dwellers did not exist and the consciousness of the modern notion of a welfare state was not present to the mind of the colonial legislature. According to the petitioners, connected with these issues and yet independent of them, is the question of the role of the Court in setting the tone of values in a democratic society.

21. The argument which bears on the provisions of Article 21 is elaborated by saying that the eviction of pavement and slum dwellers will lead, in a vicious circle, to the deprivation of their employment, their livelihood and, therefore, to the right to life. Our attention is drawn in this behalf to an extract from the judgment of Douglas J in *Baksey v. Board of Regents* (1954) M.D. 442 in which the learned Judge said:

The right to work I have assumed was the most precious liberty that man possesses. Man has indeed, as much right to work as he has to live, to be free and to own property. To work means to eat and it also means to live.

The right to live and the right to work are integrated and inter-dependant and, therefore, if a person is deprived of his job as a result of his eviction from a slum or a pavement, his very right to life is put in jeopardy. It is urged that the economic compulsions under which these persons are forced to live in slums or on pavements impart to their occupation the character of a fundamental right.

22. It is further urged by the petitioners that it is constitutionally impermissible to characterise the pavement dwellers as "trespassers" because, their occupation of pavements arises from economic compulsions. The State is under an obligation to provide to the citizens the necessities of life and, in appropriate cases, the courts have the power to issue order directing the State, by affirmative action, to promote and protect the right to life. The instant situation is one of crisis, which compels the use of public property for the purpose of survival and sustenance. Social commitment is the quintessence of our Constitution which defines the conditions under which liberty has to be enjoyed and justice has to be administered. Therefore, Directive Principles, which are fundamental in the governance of the country, must serve as a beacon light to the interpretation of the Constitutional provisions. Viewed in this context, it is urged, the impugned action of the State Government and the Bombay Municipal Corporation is violative of the provisions contained in Articles 19(1)(e), 19(1)(g) and 21 of the Constitution. The paucity of financial resources of the State is no excuse for defeating the fundamental rights of the citizens.

23. In support of this argument, reliance is placed by the petitioners on what is described as the 'factual context'. A publication dated January 1982 of the Planning Commission, Government of India, namely, 'The Report of the Expert Group of Programmes for the Alleviation of Poverty', is relied on as showing the high incidence of poverty in India. That Report shows that in 1977-78, 48% of the population lived below the poverty line, which means that out of a population of 303 million who lived below the poverty line, 252 million belonged to the rural areas. In 1979-80 another 8 million people from the rural areas were found to live below the poverty line. A Government of Maharashtra Publication "Budget and the new 20 Point Socio-Economic Programme" estimates that there are about 45 lakh families in rural areas of Maharashtra who live below the poverty line. Another 40% was in the periphery of that area. One of the major causes of the persistent rural poverty of landless labourers, marginal farmers, shepherds, physically handicapped persons and others is the extremely narrow base of production available to the majority of the rural population. The average agricultural holding of a farmer is 0.4 hectares, which is hardly adequate to enable him to make both ends meet. Landless labourers have no resource base at all and they constitute the hardcore of poverty. Due to economic pressures and lack of employment opportunities, the rural population is forced to migrate to urban areas in search of employment. "The Economic Survey of Maharashtra" published by the State Government shows that the bulk of public investment was made in the cities of Bombay, Pune and Thane, which created employment opportunities attracting the starving rural population to those cities. The slum

census conducted by the Government of Maharashtra in 1976 shows that 79% of the slum-dwellers belonged to the low income group with a monthly income below Rs. 600. The study conducted by P. Ramachandran of the Tata Institute of Social Sciences shows that in 1972, 91% of the pavement dwellers had a monthly income of less than Rs. 200. The cost of obtaining any kind of shelter in Bombay is beyond the means of a pavement dweller. The principal public housing sectors in Maharashtra, namely, The Maharashtra Housing and Area Development Agency (MHADA) and the City and Industrial Development Corporation of Maharashtra Ltd. (CIDCO) have been able to construct only 3000 and 1000 units respectively as against the annual need of 60,000 units. In any event, the cost of housing provided even by these public sector agencies is beyond the means of the slum and pavement-dwellers. Under the Urban Land (Ceiling and Regulation) Act 1975, private land owners and holders are given facility to provide housing to the economically weaker sections of the society at a stipulated price of Rs. 90 per sq. ft., which also is beyond the means of the slum and pavement-dwellers. The reigning market price of houses in Bombay varies from Rs. 150 per sq. ft. outside Bombay to Rs. 2000 per sq. ft. in the center of the city.

24. The petitioners dispute the contention of the respondents regarding the non-availability of vacant land for allotment to houseless persons. According to them, about 20,000 hectares of unencumbered land is lying vacant in Bombay. The Urban Land (Ceiling and Regulation) Act, 1975 has failed to achieve its object as is evident from the fact that in Bombay, 5% of the land-holders own 55% of the land. Even though 2952.53 hectares of Urban land is available for being acquired by the State Government as being in excess of the permissible ceiling area, only 41.51% of this excess land was, so far, acquired. Thus, the reason why there are homeless people in Bombay is not that there is no land on which homes can be built for them but, that the planning policy of the State Government permits high density areas to develop with vast tracts of land lying vacant. The pavement-dwellers and the slum-dwellers who constitute 50% of the population of Bombay, occupy only 25% of the city's residential land. It is in these circumstances that out of sheer necessity for a bare existence, the petitioners are driven to occupy the pavements and slums. They live in Bombay because they are employed in Bombay and they live on pavements because there is no other place where they can live. This is the factual context in which the petitioners claim the right under Articles 19(1)(e) and (g) and Article 21 of the Constitution.

25. The petitioners challenge the vires of Section 314 read with Sections 312 and 313 of the Bombay Municipal Corporation Act, which empowers the Municipal Commissioner to remove, without notice, any object or structure or fixture which is set up in or upon any street. It is contended that, in the first place, Section 314 does not authorise the demolition of a dwelling even on a pavement and secondly, that a provision which allows the demolition of a dwelling without notice is not just, fair or reasonable. Such a provision vests arbitrary and unguided power in the Commissioner. It also offends against the guarantee of equality because, it makes an unjustified discrimination between pavement dwellers on the one hand and pedestrians on the other. If the pedestrians are entitled to use the pavements for passing and repassing, so are the pavement dwellers entitled to use pavements for dwelling upon them. So the argument goes Apart from this, it is urged, the restrictions which are sought to be imposed by the respondents on the use of pavements by pavement-dwellers are not reasonable. A State which has failed in its constitutional obligation to usher a socialistic society has no right to evict slum and pavement-dwellers who constitute half of the city's population. Therefore, Sections 312, 313 and 314 of the B.M.C. Act must either be read down or struck down.

26. According to the learned Attorney-General, Mr. K.K. Singhvi and Mr. Shankaranarayanan who appear for the respondents, no one has a fundamental right, whatever be the compulsion, to squat on or construct a dwelling on a pavement, public road or any other place to which the public has a right of access. The right conferred by Article 19(1)(e) of the Constitution to reside and settle in any part of India cannot be read to confer a licence to encroach and trespass upon public property. Sections 3(w) and (x) of the B.M.C. Act define "Street" and "Public Street" to include a highway, a footway or a passage on which the public has the right of passage or access. Under Section 289(1) of the Act, all pavements and public streets vest in the Corporation and are under the control of the Commissioner. In so far as Article 21 is concerned, no deprivation of life, either directly or indirectly, is involved in the eviction of the slum and pavement-

dwellers from public places. The Municipal Corporation is under an obligation under Section 314 of the B.M.C. Act to remove obstructions on pavements, public streets and other public places. The Corporation does not even possess the power to permit any person to occupy a pavement or a public place on a permanent or quasi-permanent basis. The petitioners have not only violated the provisions of the B.M.C. Act, but they have contravened Sections 111 and 115 of the Bombay Police Act also. These sections prevent a person from obstructing any other person in the latter's use of a street or public place or from committing a nuisance. Section 117 of the Police Act prescribes punishment for the violation of these sections.

27. We will first deal with the preliminary objection raised by Mr. K.K. Singhvi, who appears on behalf of the Bombay Municipal Corporation, that the petitioners are estopped from contending that their huts cannot be demolished by reason of the fundamental rights claimed by them. It appears that a writ petition, No. 986 of 1961, was filed on the Original Side of the Bombay High Court by and on behalf of the pavement dwellers claiming reliefs similar to those claimed in the instant batch of writ petitions. A learned Single Judge granted an ad-interim injunction restraining the respondents from demolishing the huts and from evicting the pavement dwellers. When the petition came up for hearing on July 27, 1981, counsel for the petitioners made a statement in answer to a query from the court, that no fundamental right could be claimed to put up dwellings on foot-paths or public roads. Upon this statement, respondents agreed not to demolish until October 15, 1981, huts which were constructed on the pavements or public roads prior to July 23, 1981. On August 4, 1981, a written undertaking was given by the petitioners agreeing, inter alia, to vacate the huts on or before October 15, 1981 and not to obstruct the public authorities from demolishing them. Counsel appearing for the State of Maharashtra responded to the petitioners' undertaking by giving an undertaking on behalf of the State Government that, until October 15, 1981, no pavement dweller will be removed out of the city against his wish. On the basis of these undertakings, the learned Judge disposed of the writ petition without passing any further orders. The contention of the Bombay Municipal Corporation is that since the pavement dwellers had conceded in the High Court that they did not claim any fundamental right to put up huts on pavements or public roads and since they had given an undertaking to the High Court that they will not obstruct the demolition of the huts after October 15, 1981 they are estopped from contending in this Court that the huts constructed by them on the pavements cannot be demolished because of their right to livelihood, which is comprehended within the fundamental right to life guaranteed by Article 21 of the Constitution.

28. It is not possible to accept the contention that the petitioners are estopped from setting up their fundamental rights as a defence to the demolition of the huts put up by them on pavements or parts of public roads. There can be no estoppel against the Constitution. The Constitution is not only the paramount law of the land but, it is the source and substance of all laws. Its provisions are conceived in public interest and are intended to serve a public purpose. The doctrine of estoppel is based on the principle that consistency in word and action imparts certainty and honesty to human affairs. If a person makes a representation to another, on the faith of which the latter acts to his prejudice, the former cannot resile from the representation made by him. He must make it good. This principle can have no application to representations made regarding the assertion or enforcement of fundamental rights. For example, the concession made by a person that he does not possess and would not exercise his right to free speech and expression or the right to move freely throughout the territory of India cannot deprive him of those constitutional rights, any more than a concession that a person has no right of personal liberty can justify his detention contrary to the terms of Article 22 of the Constitution. Fundamental rights are undoubtedly conferred by the Constitution upon individuals which have to be asserted and enforced by them, if those rights are violated. But, the high purpose which the Constitution seeks to achieve by conferment of fundamental rights is not only to benefit individuals but to secure the larger interests of the community. The Preamble of the Constitution says that India is a democratic Republic. It is in order to fulfil the promise of the Preamble that fundamental rights are conferred by the Constitution, some on citizens like those guaranteed by Articles 15, 16, 19, 21 and 29, and some on citizens and non-citizens alike, like those guaranteed by Articles 14, 21, 22 and 25 of the Constitution. No individual can barter away the freedoms conferred upon him by the Constitution. A concession made by him in a proceeding, whether under a mistake of law or otherwise, that he does not possess or will not enforce any particular fundamental right, cannot create an estoppel against him in that or

any subsequent proceeding. Such a concession, if enforced, would defeat the purpose of the Constitution. Were the argument of estoppel valid, an all-powerful state could easily tempt an individual to forego his precious personal freedoms on promise of transitory, immediate benefits. Therefore, notwithstanding the fact that the petitioners had conceded in the Bombay High Court that they have no fundamental right to construct hutments on pavements and that they will not object to their demolition after October 15, 1981, they are entitled to assert that any such action on the part of public authorities will be in violation of their fundamental rights. How far the argument regarding the existence and scope of the right claimed by the petitioners is well-founded is another matter. But, the argument has to be examined despite the concession.

29. The plea of estoppel is closely connected with the plea of waiver, the object of both being to ensure bona fides in day-today transactions. In *Bashesar Nath v. The Commissioner of Income Tax Delhi* MANU/SC/0064/1958 : [1959] Supp. 1 S.C.R. 528 a Constitution Bench of this Court considered the question whether the fundamental rights conferred by the Constitution can be waived. Two members of the Bench (Das C.J. and Kapoor J.) held that there can be no waiver of the fundamental right founded on Article 14 of the Constitution. Two others (N.H. Bhagwati and Subba Rao, JJ.) held that not only could there be no waiver of the right conferred by Article 14, but there could be no waiver of any other fundamental right guaranteed by Part III of the Constitution. The Constitution makes no distinction, according to the learned Judges, between fundamental rights enacted for the benefit of an individual and those enacted in public interest or on grounds of public policy.

30. We must, therefore, reject the preliminary objection and proceed to consider the validity of the petitioners' contentions on merits.

31. The scope of the jurisdiction of this Court to deal with writ petitions under Article 32 of the Constitution was examined by a special Bench of this Court in *Smt. Ujjam Bai v. State of Uttar Pradesh* MANU/SC/0101/1961 : [1963]1SCR778 That decision would show that, in three classes of cases, the question of enforcement of the fundamental rights would arise, namely, (1) where action is taken under a statute which is ultra vires the Constitution; (2) where the statute is intra vires but the action taken is without jurisdiction; and (3) an authority under an obligation to act judicially passes an order in violation of the principles of natural justice. These categories are, of course, not exhaustive. In *Naresh Shridhar Mirajkar v. State of Maharashtra* MANU/SC/0044/1966 : [1966]3SCR744 , a Special Bench of nine learned Judges of this Court held that, where the action taken against a citizen is procedurally ultra vires, the aggrieved party can move this Court under Article 32. The contention of the petitioners is that the procedure prescribed by Section 314 of the B.M.C. Act being arbitrary and unfair, it is not "procedure established by law" within the meaning of Article 21 and, therefore, they cannot be deprived of their fundamental right to life by resorting to that procedure. The petitions are clearly maintainable under Article 32 of the Constitution.

32. As we have stated while summing up the petitioners' case, the main plank of their argument is that the right to life which is guaranteed by Article 21 includes the right to livelihood and since, they will be deprived of their livelihood if they are evicted from their slum and pavement dwellings, their eviction is tantamount to deprivation of their life and is hence unconstitutional. For purposes of argument, we will assume the factual correctness of the premise that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. Upon that assumption, the question which we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Article 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence , except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be In accordance with the procedure established by law, if the right to livelihood is not

regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages. The motive force which people their desertion of their hearths and homes in the villages that struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to live : Only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of livelihood. That is the context in which it was said by Douglas J. in *Baksey* that the right to work is the most precious liberty because, it sustains and enables a man to live and the right to life is a precious freedom. "Life", as observed by Field, J. in *Munn v. Illinois* (1877) 94 U.S. 113, means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. This observation was quoted with approval by this Court in *Kharak Singh v. The State of U.P.* MANU/SC/0085/1962 : 1963CriLJ329

33. Article 39(a) of the Constitution, which is a Directive Principle of State Policy, provides that the State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood. Article 41, which is another Directive Principle, provides, inter alia, that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work in cases of unemployment and of undeserved want. Article 37 provides that the Directive Principles, though not enforceable by any court, are nevertheless fundamental in the governance of the country. The Principles contained in Articles 39(a) and 41 must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of fundamental rights. If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. The State may not, by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21.

34. Learned Counsel for the respondents placed strong reliance on a decision of this Court in *In Re: Sant Ram* MANU/SC/0052/1960 : [1960]3SCR499 , in support of their contention that the right to life guaranteed by Article 21 does not include the right to livelihood. Rule 24 of the Supreme Court Rules empowers the Registrar to publish lists of persons who are proved to be habitually acting as touts. The Registrar issued a notice to the appellant and one other person to show cause why their names should not be included in the list of touts. That notice was challenged by the appellant on the ground, inter alia, that it contravenes Article 21 of the Constitution since, by the inclusion of his name in the list of touts, he was deprived of his right to livelihood, which is included in the right to life. It was held by a Constitution Bench of this Court that the language of Article 21 cannot be pressed in aid of the argument that the word 'life' in Article 21 includes 'livelihood' also. This decision is distinguishable because , under the Constitution, no person can claim the right to livelihood by the pursuit of an opprobrious occupation or a nefarious trade or business, like toutism, gambling or living on the gains of prostitution. The petitioners before us do not claim the right to dwell on pavements or in slums for the purpose of pursuing any activity which is illegal, immoral or contrary to public interest. Many of them pursue occupations which are humble but honourable.

35. Turning to the factual situation, how far is it true to say that if the petitioners are evicted from their slum and pavement dwellings, they will be deprived of their means of livelihood? It is impossible, in the very nature of things, together reliable data on this subject in regard to each individual petitioner and, none has been furnished to us in that form. That the eviction of a person from a pavement or slum will inevitably lead to the deprivation of his means of livelihood, is a proposition which does not have to be established in each individual case. That is an inference which can be drawn from acceptable data. Issues of general public importance, which affect the lives of large sections of the society, defy a just determination if their consideration is limited to the evidence pertaining to specific individuals. In the resolution of such issues,

there are no symbolic samples which can effectively project a true picture of the grim realities of life. The writ petitions before us undoubtedly involve a question relating to dwelling houses but, they cannot be equated with a suit for the possession of a house by one private person against another. In a case of the latter kind, evidence has to be led to establish the cause of action and justify the claim. In a matter like the one before us, in which the future of half of the city's population is at stake, the Court must consult authentic empirical data compiled by agencies, official and non-official. It is by that process that the core of the problem can be reached and a satisfactory solution found. It would be unrealistic on our part to reject the petitions on the ground that the petitioners have not adduced evidence to show that they will be rendered jobless if they are evicted from the slums and pavements. Commonsense, which is a cluster of life's experiences, is often more dependable than the rival facts presented by warring litigants.

36. It is clear from the various expert studies to which we have referred while setting out the substance of the pleadings that, one of the main reasons of the emergence and growth of squatter-settlements in big Metropolitan cities like Bombay, is the availability of job opportunities which are lacking in the rural sector. The undisputed fact that even after eviction, the squatters return to the cities affords proof of that position. The Planning Commission's publication, 'The Report of the Expert Group of Programmes for the Alleviation of Poverty' (1982) shows that half of the population in India lives below the poverty line, a large part of which lives in villages. A publication of the Government of Maharashtra, 'Budget and the New 20 Point Socio-Economic Programme' shows that about 45 lakhs of families in rural areas live below the poverty line and that, the average agricultural holding of a farmer, which is 0.4 hectares, is hardly enough to sustain him and his comparatively large family. The landless labourers, who constitute the bulk of the village population, are deeply imbedded in the mire of poverty. It is due to these economic pressures that the rural population is forced to migrate to urban areas in search of employment. The affluent and the not-so-affluent are alike in search of domestic servants. Industrial and Business Houses pay a fair wage to the skilled workman that a villager becomes in course of time. Having found a job, even if it means washing the pots and pans, the migrant sticks to the big city. If driven out, he returns in quest of another job. The cost of public sector housing is beyond his modest means and the less we refer to the deals of private builders the better for all", excluding none. Added to these factors is the stark reality of growing insecurity in villages on account of the tyranny of parochialism and casteism. The announcement made by the Maharashtra Chief Minister regarding the deportation of willing pavement dwellers afford some indication that they are migrants from the interior areas, within and outside Maharashtra. It is estimated that about 200 to 300 people enter Bombay every day in search of employment. These facts constitute empirical evidence to justify the conclusion that persons in the position of petitioners live in slums and on pavements because they have small jobs to nurse in the city and there is no where else to live. Evidently, they choose a pavement or a slum in the vicinity of their place of work, the time otherwise taken in commuting and its cost being, forbidding for their slender means. To lose the pavement or the slum is to lose the job. The conclusion, therefore, in terms of the constitutional phraseology is that the eviction of the petitioners will lead to deprivation of their livelihood and consequently to the deprivation of life.

37. Two conclusions emerge from this discussion: one, that the right to life which is conferred by Article 21 includes the right to livelihood and two, that it is established that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. But the Constitution does not put an absolute embargo on the deprivation of life or personal liberty. By Article 21, such deprivation has to be according to procedure established by law. In the instant case, the law which allows the deprivation of the right conferred by Article 21 is the Bombay Municipal Corporation Act, 1888, the relevant provisions of which are contained in Sections 312(1), 313(1)(a) and 314. These sections which occur in Chapter XI entitled 'Regulation of Streets' read thus:

Section 312 - Prohibition of structures or fixtures which cause obstruction in streets.

(1) No person shall, except with the permission of the Commissioner under Section 310 or 317 erect or set up any wall, fence, rail, post, step, booth or other structure or fixture in or upon any street or upon or over

any open channel, drain well or tank in any street so as to form an obstruction to, or an encroachment upon, or a projection over, or to occupy, any portion or such street, channel, drain, well or tank.

Section 313 - Prohibition of deposit, etc., of things in streets.

(1) No person shall, except with the written permission of the Commissioner,-

(a) place or deposit upon any street or upon any open channel drain or well in any streets (or in any public place) any stall, chair, bench, box, ladder, bale or other thing so as to form an obstruction thereto or encroachment thereon.

Section 314 - Power to remove without notice anything erected deposited or hawked in contravention of Sections 312, 313 or 313A.

The Commissioner may, without notice, cause to be removed-

(a) any wall, fence, rail, post, step, booth or other structure or fixture which shall be erected or set up in or any street, or upon or over any open channel, drain, well or tank contrary to the provisions of Sub-section (1) of Section 312, after the same comes into force in the city or in the suburbs, after the date of the coming into force of the Bombay Municipal (Extension of Limits) Act, 1950 or in the extended suburbs after the date of the coming into force of the Bombay Municipal Further Extension of Limits and Schedule BBA (Amendment) Act, 1956;

(b) any stall, chair, bench, box, ladder, bale, board or shelf, or any other thing whatever placed, deposited, projected, attached, or suspended in, upon, from or to any place in contravention of Sub-section (1) of Section 313;

(c) any article whatsoever hawked or exposed for sale in any public place or in any public street in contravention of the provisions of Section 313A and any vehicle, package, box, board, shelf or any other thing in or on which such article is placed or kept for the purpose of sale.

By Section 3(w), "street" includes a causeway, footway, passage etc., over which the public have a right of passage or access.

38. These provisions, which are clear and specific, empower the Municipal Commissioner to cause to be removed encroachments on footpaths or pavements over which the public have a right of passage or access. It is undeniable that, in these cases, wherever constructions have been put up on the pavements, the public have a right of passage or access over those pavements. The argument of the petitioners is that the procedure prescribed by Section 314 for the removal of encroachments from pavements is arbitrary and unreasonable since, not only does it not provide for the giving of a notice before the removal of an encroachment but, it provides expressly that the Municipal Commission may cause the encroachment to be removed "without notice".

39. It is far too well-settled to admit of any argument that the procedure prescribed by law for the deprivation of the right conferred by Article 21 must be fair, just, "and reasonable. (See E.P. Royappa v. State of Tamil Nadu MANU/SC/0380/1973 : (1974)ILLJ172SC ; Maneka Gandhi v. Union of India MANU/SC/0133/1978 : [1978]2SCR621 ; M.O. Hoscot v. State of Maharashtra MANU/SC/0119/1978 : 1978CriLJ1678 Sunil Batra, I v. Delhi Administration MANU/SC/0184/1978 : 1978CriLJ1741 Sita Ram v. State of U.P. MANU/SC/0244/1979 : 1979CriLJ659 ; Hussainara Khatoon, I v. Home Secretary, State of Bihar, Patna MANU/SC/0121/1979 : 1979CriLJ1045 , 537; Hussainara Khatoon, II v. Home Secretary, State of Bihar, Patna [1960] 1 S.C.C. 81; Sunil Batra, II v. Delhi Administration MANU/SC/0184/1978 : 1978CriLJ1741 ; Jolly George Verghese v. The Bank of Cochin MANU/SC/0014/1980 : [1980]2SCR913 , 921-922; Kasturi Lal Lakshmi Reddy v. State of Jammu and Kashmir [1980] 3 S.C.R. 1336; and Francis

Coralie Mullin v. The Administrator, Union Territory of Delhi MANU/SC/0517/1981 : 1981CriLJ306 , 523-24.)

40. Just as a mala fide act has no existence in the eye of law, even so, unreasonableness vitiates law and procedure alike, it is therefore essential that the procedure prescribed by law for depriving a person of his fundamental right, in this case the right to life, must conform to the norms of justice and fair play. Procedure, which is unjust or unfair in the circumstances of a case, attracts the vice of unreasonableness, thereby vitiating the law which prescribes that procedure and consequently, the action taken under it. Any action taken by a public authority which is invested with statutory powers has, therefore, to be tested by the application of two standards : The action must be within the scope of the authority conferred by law and secondly, it must be reasonable. If any action, within the scope of the authority conferred by law, is found to be unreasonable, it must mean that the procedure established by law under which that action is taken is itself unreasonable. The substance of the law cannot be divorced from the procedure which it prescribes for, how reasonable the law is, depends upon how fair is the procedure prescribed by it, Sir Raymond Evershed says that, "from the point of view of the ordinary citizen, it is the procedure that will most strongly weigh with him. He will tend to form his judgment of the excellence or otherwise of the legal system from his personal knowledge and experience in seeing the legal machine at work", ['The influence of Remedies on Rights' (Current Legal Problems 1953, Volume 6.)]. Therefore, "He that takes the procedural sword shall perish with the sword. "[Per Frankfurter J. in *Vitelli v. Seton* 3 L.Ed. (2nd Series) 1012]

41. Justice K.K. Mathew points out in his article on 'The welfare State, Rule of Law and Natural Justice', which is to be found in his book 'Democracy, equality and Freedom', that there is "substantial agreement in juristic thought that the great purpose of the Rule of Law notion is the protection of the individual against arbitrary exercise of power wherever it is found". Adopting that formulation, Bhagwati J., speaking for the Court, observed in *Ramana Dayaram, Shetty v. The International Airport Authority of India* MANU/SC/0048/1979 : (1979)ILLJ217SC , 1032 that it is "unthinkable that in a democracy governed by the Rule of Law, the executive Government or any of its officers should possess arbitrary power over the interest of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the Rule of Law and its bare minimal requirement".

42. Having given our anxious and solicitous consideration to this question, we are of the opinion that the procedure prescribed by Section 314 of the Bombay Municipal Corporation Act for removal of encroachments on the footpaths or pavements over which the public has the right of passage or access, cannot be regarded as unreasonable, unfair or unjust. There is no static measure of reasonableness which can be applied to all situations alike. Indeed, the question "is this procedure reasonable?" implies and postulates the inquiry as to whether the procedure prescribed is reasonable in the circumstances of the case, In *Francis Goralie Mullin* MANU/SC/0517/1981 : 1981CriLJ306 , Bhagwati, J., Said:...it is for the Court to decide in exercise of its constitutional power of judicial review whether the deprivation of life or personal liberty in a given case is by procedure, which is reasonable, fair and just or it is otherwise.

43. In the first place, footpaths or pavements are public properties which are intended to serve the convenience of the general public. They are not laid for private use and indeed, their use for a private purpose frustrates the very object for which they are carved out from portions of public streets. The main reason for laying out pavements is to ensure that the pedestrians are able to go about their daily affairs with a reasonable measure of safety and security. That facility, which has matured into a right of the pedestrians, cannot be set at naught by allowing encroachments to be made on the pavements. There is no substance in the argument advanced on behalf of the petitioners that the claim of the pavement dwellers to put up constructions on pavements and that of the pedestrians to make use of the pavements for passing and repassing, are competing claims and that, the former should be preferred to the latter. No one has the right to make use of a public property for a private purpose without the requisite authorisation and, therefore, it is erroneous to contend that the pavement dwellers have the right to encroach upon pavements by constructing dwellings thereon. Public streets, of which pavements form a part, are primarily dedicated for the purpose of

passage and, even the pedestrians have but the limited right of using pavements for the purpose of passing and repassing. So long as a person does not transgress the limited purpose for which pavements are made, his use thereof is legitimate and lawful. But, if a person puts any public property to a use for which it is not intended and is not authorised so to use it, he becomes a trespasser. The common example which is cited in some of the English cases (see, for example, *Hickman v. Maisey* [1900] 1 Q.B. 752, is that if a person, while using a highway for passage, sits down for a time to rest himself by the side of the road, he does not commit a trespass. But, if a person puts up a dwelling on the pavement, whatever may be the economic compulsions behind such an act, his user of the pavement would become unauthorised. As stated in *Hickman*, it is not easy to draw an exact line between the legitimate user of a highway as a highway and the user which goes beyond the right conferred upon the public by its dedication. But, as in many other cases, it is not difficult to put cases well on one side of the line. Putting up a dwelling on the pavement is a case which is clearly on one side of the line showing that it is an act of trespass. Section 61 of the Bombay Municipal Corporation Act lays down the obligatory duties of the Corporation, under Clause (d) of which, it is its duty to take measures for abatement of all nuisances. The existence of dwellings on the pavements is unquestionably a source of nuisance to the public, at least for the reason that they are denied the use of pavements for passing and repassing. They are compelled, by reason of the occupation of pavements by dwellers, to use highways and public streets as passages. The affidavit filed on behalf of the Corporation shows that the fall-out of pedestrians in large numbers on highways and streets constitutes a grave traffic hazard. Surely, pedestrians deserve consideration in the matter of their physical safety, which cannot be sacrificed in order to accommodate persons who use public properties for a private purpose, unauthorisedly. Under Clause (c) of Section 61 of the B.M.C. Act, the Corporation is under an obligation to remove obstructions upon public streets another public places. The counter-affidavit of the Corporation shows that the existence of hutments on pavements is a serious impediment in repairing the roads, pavements, drains and streets. Section 63(k), which is discretionary, empowers the Corporation to take measures to promote public safety, health or convenience not specifically provided otherwise. Since it is not possible to provide any public conveniences to the pavement dwellers on or near the pavements, they answer the nature's call on the pavements or on the streets adjoining them. These facts provide the background to the provision for removal of encroachments on pavements and footpaths.

44. The challenge of the petitioners to the validity of the relevant provisions of the Bombay Municipal Corporation Act is directed principally at the procedure prescribed by Section 314 of that Act, which provides by Clause (a) that the Commissioner may, without notice, take steps for the removal of encroachments in or upon any street, channel, drain, etc. By reason of Section 3(w), 'street' includes a causeway, footway or passage. In order to decide whether the procedure prescribed by Section 314 is fair and reasonable, we must first determine the true meaning of that section because, the meaning of the law determines its legality. If a law is found to direct the doing of an act which is forbidden by the Constitution or to compel, in the performance of an act, the adoption of a procedure which is impermissible under the Constitution, it would have to be struck down. Considered in its proper perspective, Section 314 is in the nature of an enabling provision and not of a compulsive character. It enables the Commissioner, in appropriate cases, to dispense with previous notice to persons who are likely to be affected by the proposed action. It does not require and, cannot be read to mean that, in total disregard of the relevant circumstances pertaining to a given situation, the Commissioner must cause the removal of an encroachment without issuing previous notice. The primary rule of construction is that the language of the law must receive its plain and natural meaning. What Section 314 provides is that the Commissioner may, without notice, cause an encroachment to be removed. It does not command that the Commissioner shall, without notice, cause an encroachment to be removed. Putting it differently, Section 314 confers on the Commissioner the discretion to cause an encroachment to be removed with or without notice. That discretion has to be exercised in a reasonable manner so as to comply with the constitutional mandate that the procedure accompanying the performance of a public act must be fair and reasonable. We must lean in favour of this interpretation because it helps sustain the validity of the law. Reading Section 314 as containing a command not to issue notice before the removal of an encroachment will make the law Invalid.

45. It must further be presumed that, while vesting in the Commissioner the power to act without notice, the Legislature intended that the power should be exercised sparingly and in cases of urgency which brook no delay. In all other cases, no departure from the audi alteram partem rule ('Hear the other side') could be presumed to have been intended. Section 314 is so designed as to exclude the principles of natural justice by way of exemption and not as a general rule. There are situations which demand the exclusion of the rules of natural justice by reason of diverse factors like time, place the apprehended danger and so on. The ordinary rule which regulates all procedure is that persons who are likely to be affected by the proposed action must be afforded an opportunity of being heard as to why that action should not be taken. The hearing may be given individually or collectively, depending upon the facts of each situation. A departure from this fundamental rule of natural justice may be presumed to have been intended by the Legislature only in circumstances which warrant it. Such circumstances must be shown to exist, when so required, the burden being upon those who affirm their existence.

46. It was urged by Shri K.K. Singhvi on behalf of the Municipal Corporation that the Legislature may well have intended that no notice need be given in any case whatsoever because, no useful purpose could be served by issuing a notice as to why an encroachment on a public property should not be removed. We have indicated above that far from so intending, the Legislature has left it to the discretion of the Commissioner whether or not to give notice, a discretion which has to be exercised reasonably. Counsel attempted to demonstrate the practical futility of issuing the show cause notice by pointing out firstly, that the only answer which a pavement dweller, for example, can make to such a notice is that he is compelled to live on the pavement because he has no other place to go to and secondly, that it is hardly likely that in pursuance of such a notice, pavement dwellers or slum dwellers would ask for time to vacate since, on their own showing, they are compelled to occupy some pavement or slum or the other if they are evicted. It may be true to say that, in the generality of cases, persons who have committed encroachments on pavements or oh other public properties may not have an effective answer to give. It is a notorious fact of contemporary life in metropolitan cities, that no person in his senses would opt to live on a pavement or in a slum, if any other choice were available to him. Anyone who cares to have even a fleeting glance at the pavement or slum dwellings will see that they are the very hell on earth. But, though this is so, the contention of the Corporation that no notice need be given because, there can be no effective answer to it, betrays a misunderstanding of the rule of hearing, which is an important element of the principles of natural justice. The decision to dispense with notice cannot be founded upon a presumed impregnability of the proposed action. For example, in the common run of cases, a person may contend in answer to a notice under Section 314 that (i) there was, in fact, no encroachment on any public road, footpath or pavement, or (ii) the encroachment was so slight and negligible as to cause no nuisance or inconvenience to other members of the public, or (iii) time may be granted for removal of the encroachment in view of humane considerations arising out of personal, seasonal or other factOrs. It would not be right to assume that the Commissioner would reject these or similar other considerations without a careful application of mind. Human compassion must soften the rough edges of justice in all situations. The eviction of the pavement or slum dweller not only means his removal from the house but the destruction of the house itself. And the destruction of a dwelling house is the end of all that one holds dear in life, humbler the dwelling, greater the suffering and more intense the sense of loss.

47. The proposition that notice need not be given of a proposed action because , there can possibly be no answer to It, is contrary to the well-recognized understanding of the real import of the rule of hearing. That proposition overlooks that justice must not only be done but must manifestly be seen to be done and confuses one for the other. The appearance of injustice is the denial of justice. It is the dialogue with the person likely to be affected by the proposed action which meets the requirement that justice must also be seen to be done. Procedural safeguards have their historical origins in the notion that conditions of personal freedom can be preserved only when there is some institutional check on arbitrary action on the part of public authorities. (Kadish, "Methodology and Criteria in Due Process Adjudication - A Survey and Criticism," 66 Yale L.J. 319, 340 [1957]) The right to be heard has two facets, intrinsic and instrumental. The intrinsic value of that right consists in the opportunity which it gives to individuals or groups, against whom decisions taken by public authorities operate, to participate in the processes by which those decisions

are made, an opportunity that expresses their dignity as persons. (Golberg v. Kelly 397 U.S. 254, 264-65 [1970] right of the poor to participate in public processes).

Whatever its outcome, such a hearing represents a valued human interaction in which the affected person experience at least the satisfaction of participating in the decision that vitally concerns her, and perhaps the separate satisfaction of receiving an explanation of why the decision is being made in a certain way. Both the right to be heard from, and the right to be told why, are analytically distinct from the right to secure a different outcome; these rights to interchange express the elementary idea that to be a person, rather than a thing, is at least to be consulted about what is done with one. Justice Frankfurter captured part of this sense of procedural justice when he wrote that the "Validity and moral authority of a conclusion largely depend on the mode by which it was reached.... No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it. Nor has a better way been found for generation the feeling, so important to a popular government, that justice has been done". Joint Anti-fascist Refugee Committee v. Mc Grath 341 U.S. 123. At stake here is not Just the much-acclaimed appearance of justice but, from a perspective that treats process as intrinsically significant, the very essence of justice", (See "American Constitutional Law" by Laurence H. Tribe, Professor of Law, Harvard University (Ed. 1978, page 503).

The instrumental facet of the right of hearing consists in the means which it affords of assuring that the public rules of conduct, which result in benefits and prejudices alike, are in fact accurately and consistently followed.

It ensures that a challenged action accurately reflects the substantive rules applicable to such action; its point is less to assure participation than to use participation to assure accuracy.

48. Any discussion of this topic would be incomplete without reference to an important decision of this Court in S.L. Kapoor v. Jagmohan MANU/SC/0036/1980 : [1981]1SCR746 , 766. In that case, the suppression of the New Delhi Municipal Committee was challenged on the ground that it was in violation of the principles of natural justice since, no show cause notice was issued before the order of suppression was passed. Linked with that question was the question whether the failure to observe the principles of natural justice matters at all, if such observance would have made no difference, the admitted or indisputable facts speaking for themselves. After referring to the decisions in Ridge v. Baldwin [1964] A.C. 40 ; John v. Rees [1970] 1 Cha 345 ; Annamuthodo v. Oilfields Workers' Trade Union [1961] 3 All E.R. 621; Margarita Fuentes at al. v. Tobert L. Shevin 32 L.Ed. 2d 556 ; Chintepalli Agency Taluk Arrack Sales Cooperative Society Ltd. v. Secretary (Food and Agriculture) Government of Andhra Pradesh MANU/SC/0369/1977 : [1978]1SCR563 at 567, 569-570, and to an interesting discussion of the subject in Jackson's Natural Justice (1980 Edn.) the Court, speaking through one of us, Chinnappa Reddy, J. Said :In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It will comes from a person who has denied justice that the person who has been denied justice is not prejudiced.

These observations sum up the true legal position regarding the purport and implications of the right of hearing.

49. The jurisprudence requiring hearing to be given to those who have encroached on pavements and other public properties evoked a sharp response from the respondents counsel. "Hearing to be given to trespassers who have encroached on public properties? To persons who commit crimes?", they seemed to ask in wonderment. There is no doubt that the petitioners are using pavements and other public properties for an unauthorised purpose, but, their intention or object in doing so is not to "commit an offence or intimidate, insult or annoy any person", which is the gist or the offence of 'Criminal trespass' under Section 441 of the Penal Code. They manage to find a habitat in places which are mostly filthy or marshy, out of sheer helplessness. It is not as if they have a free choice to exercise as to whether to commit an encroachment and

if so, where. The encroachments committed by these persons are involuntary acts in the sense that those acts are compelled by inevitable circumstances and are not guided by choice. Trespass is a tort. But, even the law of Torts requires that though a trespasser may be evicted forcibly, the force used must be no greater than what is reasonable and appropriate to the occasion and, what is even more important, the trespasser should be asked and given a reasonable opportunity to depart before force is used to expel him. (See Ramaswamy Iyer's 'Law of Torts' 7th Ed. by Justice and Mrs. S.K. Desai, (page 98, para 41). Besides, under the Law of Torts, necessity is a plausible defence, which enables a person to escape liability on the ground that the acts complained of are necessary to prevent greater damage, inter alia, to himself. "Here, as elsewhere in the law of torts, a balance has to be struck between competing sets of values..." (See Salmond and Heuston, 'Law of Torts', 18th Ed. (Chapter 21, page 463, Article 185 - 'Necessity').

50. The charge made by the State Government in its affidavit that slum and pavement dwellers exhibit especial criminal tendencies is unfounded. According to Dr. P.K. Muttagi, Head of the unit for urban studies of the Tata Institute of Social Sciences, Bombay, the surveys carried out in 1972, 1977, 1979 and 1981 show that many families which have chosen the Bombay footpaths just for survival, have been living there for several years and that 53 per cent of the pavement dwellers are self-employed as hawkers in vegetables, flowers, ice-cream, toys, balloons, buttons, needles and so on. Over 38 per cent are in the wage-employed category as casual labourers, construction workers, domestic servants and luggage carriers. Only 1.7 per cent of the total number is generally unemployed. Dr. Muttagi found among the pavement dwellers a graduate of Marathwada University and Muslim Post of some standing. "These people have merged with the landscape, become part of it, like the chameleon", though their contact with their more fortunate neighbours who live in adjoining high-rise buildings is casual. The most important finding of Dr. Muttagi is that the pavement dwellers are a peaceful lot, "for, they stand to lose their shelter on the pavement if they disturb the affluent or indulge in fights with their fellow dwellers". The charge of the State Government, besides being contrary to these scientific findings, is born of prejudice against the poor and the destitute. Affluent people living in sky-scrapers also commit crimes varying from living on the gains of prostitution and defrauding the public treasury to smuggling. But, they get away. The pavement dwellers, when caught, defend themselves by asking, "who does not commit crimes in this city?" As observed by Anand Chakravarti, "The separation between existential realities and the rhetoric of socialism indulged in by the wielders of power in the government cannot be more profound." 'Some aspects of inequality in rural India : A Sociological Perspective published in 'Equality and Inequality, Theory and Practice' edited by Andre Beteille, 1983.

51. Normally, we would have directed the Municipal Commissioner to afford an opportunity to the petitioners to show why the encroachments committed by them on pavements or footpaths should not be removed. But, the opportunity which was denied by the Commissioner was granted by us in an ample measure, both sides having made their contentions elaborately on facts as well as on law. Having considered those contentions, we are of the opinion that the Commissioner was justified in directing the removal of the encroachments committed by the petitioners on pavements, footpaths or accessory roads. As observed in S.L. Kapoor, (Supra) "where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs". Indeed, in that case, the Court did not set aside the order of supersession in view of the factual position stated by it. But, though we do not see any justification for asking the Commissioner to hear the petitioners, we propose to pass an order which, we believe, he would or should have passed, had he granted a hearing to them and heard what we did. We are of the opinion that the petitioners should not be evicted from the pavements, footpaths or accessory roads until one month after the conclusion of the current monsoon season, that is to say, until October 31, 1985. In the meanwhile, as explained later, steps may be taken to offer alternative pitches to the pavement dwellers who were or who happened to be censured in 1976. The offer of alternative pitches to such pavement dwellers should be made good in the spirit in which it was made, though we do not propose to make it a condition precedent to the removal of the encroachments committed by them.

52. Insofar as the Kamraj Nagar Basti is concerned, there are over 400 hutments therein. The affidavit of the Municipal Commissioner, Shri D.M. Sukhthankar, shows that the Basti was constructed on an accessory road, leading to the highway. It is also clear from that affidavit that the hutments were never regularised and no registration numbers were assigned to them by the Road Development Department. Since the Basti is situated on a part of the road leading to the Express Highway, serious traffic hazards arise on account of the straying of the Basti children on to the Express Highway, on which there is heavy vehicular traffic. The same criterion would apply to the Kamraj Nagar Basti as would apply to the dwellings constructed unauthorisedly on other roads and pavements in the city.

53. The affidavit of Shri Arvind V. Gokak, Administrator of the Maharashtra Housing and Areas Development Authority, Bombay, shows that the State Government had taken a decision to compile a list of slums which were required to be removed in public interest and to allocate, after a spot inspection, 500 acres of vacant land in or near the Bombay Suburban District for resettlement of hutment dwellers removed from the slums. A census was accordingly carried out on January 4, 1976 to enumerate the slum dwellers spread over about 850 colonies all over Bombay. About 67% of the hutment dwellers produced photographs of the heads of their families, on the basis of which the hutments were numbered and their occupants were given identity cards. Shri Gokak further says in his affidavit that the Government had also decided that the slums which were in existence for a long time and which were improved and developed, would not normally be demolished unless the land was required for a public purposes. In the event that the land was so required, the policy of the State Government was to provide alternate accommodation to the slum dwellers who were censured and possessed identity cards. The Circular of the State Government dated February 4, 1976 (No. SIS/176/D-41) bears out this position. In the enumeration of the hutment dwellers, some persons occupying pavements also happened to be given census cards. The Government decided to allot pitches to such persons at a place near Malavani. These assurance held forth by the Government must be made good. In other words despite the finding recorded by us that the provision contained in Section 314 of the B.M.C Act is valid, pavement dwellers to whom census cards were given in 1976 must be given alternate pitches at Malavani though not as a condition precedent to the removal of encroachments committed by them. Secondly, slum dwellers who were censured and were given identity cards must be provided with alternate accommodation before they are evicted. There is a controversy between the petitioners and the State Government as to the extent of vacant land which is available for resettlement of the inhabitants of pavements and slums. Whatever that may be, the highest priority must be accorded by the State Government to the resettlement of these unfortunate persons by allotting to them such land as the Government finds to be conveniently available. The Maharashtra Employment Guarantee Act, 1977, the Employment Guarantee Scheme, the 'New Twenty Point Socio-Economic Programme, 1982', the 'Affordable Low Income Shelter Programme in Bombay Metropolitan Region' and the Programme of House Building for the economically weaker sections' must not remain a dead letter as such schemes and programmes often do. Not only that, but more and more such programmes must be initiated if the theory of equal protection of laws has to take its rightful place in the struggle for equality. In these matters, the demand is not so much for less governmental interference as for positive governmental action to provide equal treatment to neglected segments of society. The profound rhetoric of socialism must be translated into practice for, the problems which confront the State are problems of human destiny.

54. During the course of arguments, an affidavit was filed by Shri S.K. Jahagirdar, Under Secretary in the Department of Housing, Government of Maharashtra, setting out the various housing schemes which are under the consideration of the State Government. The affidavit contains useful information on various aspects relating to slum and pavement dwellers. The census of 1976 which is referred to in that affidavit shows that 28.18 lakhs of people were living in 6,27,404 households spread over 1680 slum pockets. The earning of 80 per cent of the slum house holds did not exceed Rs. 600 per month. The State Government has a proposal to undertake 'Low Income Scheme Shelter Programme' with the aid of the World Bank. Under the Scheme, 85,000 small plots for construction of houses would become available, out of which 40,000 would be in Greater Bombay, 25,00 in the Thane-Kalyan area and 20,000 in the New Bombay region. The State Government is also proposing to undertake 'Slum Upgradation Programme (SUP)' under which basic civic amenities would be made available to the slum dwellers. We trust that these Schemes, grandiose as

they appear, will be pursued faithfully and the aid obtained from the World Bank utilised systematically and effectively for achieving its purpose.

55. There is no short term or marginal solution to the question of squatter colonies, nor are such colonies unique to the cities of India. Every country, during its historical evolution, has faced the problem of squatter settlements and most countries of the under-developed world face this problem today. Even the highly developed affluent societies face the same problem, though with their larger resources and smaller populations, their task is far less difficult. The forcible eviction of squatters, even if they are resettled in other sites, totally disrupts the economic life of the household. It has been a common experience of the administrators and planners that when resettlement is forcibly done, squatters eventually sell their new plots and return to their original sites near their place of employment. Therefore, what is of crucial importance to the question of thinning out the squatters' colonies in metropolitan cities is to create new opportunities for employment in the rural sector and to spread the existing job opportunities evenly in urban areas. Apart from the further misery and degradation which it involves, eviction of slum and pavement dwellers is an ineffective remedy for decongesting the cities. In a highly readable and moving account of the problems which the poor have to face, Susan George says : ('How the Other Half Dies - The Real Reasons for World Hunger' (Polican books).

So long as thorough going land reform, re-grouping and distribution of resources to the poorest, bottom half of the population does not take place, Third World countries can go on increasing their production until hell freezes and hunger will remain, for the production will go to those who already have plenty - to the developed world or to the wealthy in the Third World itself. Poverty and hunger walk hand in hand. (Page 18).

56. We will close with a quotation from the same book which has a message:

Malnourished babies, wasted mothers, emaciated corpses in the streets of Asia have definite and definable reasons for existing. Hunger may have been the human race's constant companion, and 'the poor may always be with us', but in the twentieth century, one cannot take this fatalistic view of the destiny of millions of fellow creatures. Their condition is not inevitable but is caused by identifiable forces within the province of rational, human control. (p.15)

57. To summarise, we hold that no person has the right to encroach, by erecting a structure or otherwise, on footpaths, pavements or any other place reserved or ear-marked for a public purpose like, for example, a garden or a playground; that the provision contained in Section 314 of the Bombay Municipal Corporation Act is not unreasonable in the circumstances of the case; and that, the Kamraj Nagar Basti is situated on an accessory road leading to the Western Express Highway. We have referred to the assurances given by the State Government in its pleadings here which, we repeat, must be made good. Stated briefly, pavement dwellers who were censured or who happened to be censured in 1976 should be given, though not as a condition precedent to their removal, alternate pitches at Malavani or at such other convenient place as the Government considers reasonable but not farther away in terms of distance; slum dwellers who were given identity cards and whose dwellings were numbered in the 1976 census must be given alternate sites for their re-settlement; slums which have been in existence for a long time, say for twenty years or more, and which have been improved and developed will not be removed unless the land on which they stand or the appurtenant land, is required for a public purposes, in which case, alternate sites or accommodation will be provided to them, the 'Low Income Scheme Shelter Programme' which is proposed to be undertaken with the aid of the World Bank will be pursued earnestly; and, the Slum Upgradation Programme (SUP)' under which basic amenities are to be given to slum dwellers will be implemented without delay. In order to minimise the hardship involved in any eviction, we direct that the slums, wherever situated, will not be removed until one month after the end of the current monsoon season, that is, until October 31, 1985 and, thereafter, only in accordance with this judgment. If any slum is required to be removed before that date, parties may apply to this Court. Pavement dwellers, whether censured or uncensored, will not be removed until the same date viz. October 31, 1985.

58. The Writ Petitions will stand disposed of accordingly. There will be no order as to costs.

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2. Chameli Singh and others Vs. State of U.P. (1995)

MANU/SC/0286/1996

Equivalent Citation: AIR1996SC1051, JT1995(9)SC380, 1996(1)SCALE101, (1996)2SCC549, [1995]Supp6SCR827

IN THE SUPREME COURT OF INDIA

Civil Appeal Nos. 12122 of 1995

Decided On: 15.12.1995

Appellants:**Chameli Singh and others etc.**

Vs.

Respondent: **State of U.P. and another**

Hon'ble Judges/Coram:

K. Ramaswamy, Faizanuddin and B.N. Kirpal, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: R.K. Jain and P.K. Jain, Advs

For Respondents/Defendant: N.M. Ghatate and Ashok K. Srivastava, Advs.

Subject: Property

Catch Words

Mentioned IN

Acts/Rules/Orders:

Constitution of India - Article 19(1), Constitution of India - Article 21, Constitution of India - Article 22, Constitution of India - Article 39; Land Acquisition Act, 1894 - Section 4(1), Land Acquisition Act, 1894 - Section 5A, Land Acquisition Act, 1894 - Section 6, Land Acquisition Act, 1894 - Section 9, Land Acquisition Act, 1894 - Section 17(1A), Land Acquisition Act, 1894 - Section 23(1A); Urban Land Ceiling Act - Section 20, Urban Land Ceiling Act - Section 21

Cases Referred:

Narayan Govind Gavate v. State of Maharashtra MANU/SC/0015/1976; P.G. Gupta v. State of Gujarat MANU/SC/1006/1995; M/s. Shantistar Builders v. Narayan Khimalal Totame MANU/SC/0115/1990; Francis Coralie v. Union Territory of Delhi MANU/SC/0517/1981; State of Karnataka v. Narasimhamurthy MANU/SC/0013/1996; Kurra Subba Rao v. Distt. Collector MANU/AP/0126/1975; Kasiredi Papaiah v. Government of A.P. MANU/AP/0126/1975; State of U.P. v. Pista Devi MANU/SC/0401/1986; Deepak Pahwa v. Lt. Governor of Delhi MANU/SC/0228/1984; Jage Ram v. State of Harayana MANU/SC/0571/1971; Rajasthan Housing Board v. Shri Kishan MANU/SC/0466/1993; State of U.P. v. Keshav Prasad Singh MANU/SC/0500/1995; Olga Tellis v. Bombay Municipal Corpn. MANU/SC/0039/1985; Gauri Shankar v. Union of India MANU/SC/0010/1995; Aflatoon v. Lt. Governor, Delhi MANU/SC/0437/1974

Prior History:

From the Judgment and Order dated 5.2.93 of the Allahabad High Court in C. Misc. W.P. No. 15377 of 1983

Citing Reference:

Case Note:

Property - acquisition - Section 5-A of Land Acquisition Act, 1894 - land acquired for providing houses to 'dalits' - 3 years pre and post notification delay on part of officers in finalising and publishing notification - enquiry under Section 5-A not conducted on ground of urgency - delay itself accelerates urgency - larger delay greater be urgency - so long deplorable housing needs of 'dalits' not solved urgency continues to subsist - when Government forms opinion of urgency on basis of constitutional obligation Court should not disturb findings unless finds mala fide in exercise of power.

ORDER

K. Ramaswamy, J.

1. Leave granted.

C.A. No. 12122 /95 @ SLP (C) No. 4896/93

2. This appeal by special leave arises from the judgment and order dated February 5, 1993 by the Division Bench of the Allahabad High Court in Writ Petition No. 15377 of 1983. The appellants are owners of the

lands in plot No. 16 of an extent of 5 bighas 6 biswas and 14 biswas respectively in village Bairam Nagar, Parganas, Nahtaur, Tahsil Dhampur, District Bijnore. These lands alongwith other lands were notified by publication in the State Gazette under Section 4(1) of the Land Acquisition Act 1894 (for short, "the Act") on July 23, 1983 and the declaration under Section 6 was also published simultaneously dispensing with the inquiry under Section 5-A. The appellants challenged the validity of the notification under Section 4(1) and the exercise of the power given under Section 17(1) read with Section 17(4) dispensing the inquiry under Section 5-A. Three contentions were raised and negated by the Division Bench. The first contention was that since the lands are not waste or arable lands, notification under Section 17(4) is invalid. Secondly, it was contended that dispensing with the inquiry under Section 5-A is not justifiable as there is no urgency to take possession even though the land was acquired for providing houses to Scheduled Castes (for short, 'Dalits'). Thirdly, it was contended that on account of the acquisition, the appellants will be deprived of their lands which is the only source of their livelihood violating Article 21 of the Constitution. Thus this appeal by special leave. Shri R.K. Jain, their learned senior counsel reiterated with added vehemence highlighting that there was pre and post-notification delay of more than three years. The proposal was put up in 1979 and the notification was approved in February but published in April 30, 1983 which would show that the urgency is not such which does not brook the delay of 30 days in conducting inquiry under Section 5-A. Right to conduct an inquiry under Section 5-A is valuable right and minimal safeguard to the owner and it would not be abrogated by exercising power of invoking urgency clause under Section 17(4) of the Act. He contended that in all the acquisitions for housing purpose conducting inquiry under Section 5-a should be the Rule and dispensing with such inquiry should be exceptional and only in rare cases like those covered by Section 17(2). In support thereof he placed strong reliance on the holding of this Court in Narayan Govind Gavate etc. v. State of Maharashtra MANU/SC/0015/1976 : [1977]1SCR763 . Acquisition of the land deprives the owner of his source of livelihood enshrined under Article 21 of the Constitution which cannot be deprived by denuding the owner of the means of livelihood, viz., the land by resorting to compulsory acquisition.

3. It is found as a fact that the houses put up by the appellants do not form part of the agricultural lands. Section 17(1A) as amended by the U.P. State Legislature provides power to take possession under Sub-section (1) which may also be exercised in the case lands other than waste or arable land, where the land is acquired, for or in connection with sanitary improvements of any kind or planned development. It would, therefore, be clear that the State Government is statutorily empowered to exercise the power under Section 17(4). When the Government forms an opinion that it is necessary to require immediate possession of the land for building houses for the Dalits, it forms the opinion of urgency to take immediate possession for the said purpose. Accordingly it is entitled to direct dispensing with the inquiry under Section 5-A and publish the declaration under Section 6 after the date of the publication of Section 4(1) notification. Thereafter, under Sub-section (1) of Section 17 the Land Acquisition Officer, after service of notice under Section 9 and expiry of 15 days therefrom, becomes entitled to take possession of land to proceed with the public purpose. The question therefore, is whether the Government would be justified in dispensing the inquiry under Section 5-A.

3. It is settled law that the opinion of urgency formed by the appropriate Government to take immediate possession, is a subjective conclusion based on the material before it and it is entitled to great weight unless it is vitiated by mala fides or colourable exercise of power. Article 25(1) of the Universal Declaration of Human Rights declares that "everyone has the right to standard of living adequate for the health and well-being of himself and his family including food, clothing, housing, medical care and necessary social services." Article 11(1) of the International Covenant on Economic, Social and Cultural Rights, 1966 laid down that State Parties to the Covenant recognise "the right to everyone to an adequate standard of living for himself and for his family including food, clothing, housing and to the continuous improvement of living conditions.' The State parties will take appropriate steps to ensure realisation of this right. In Sri. P.G. Gupta v. State of Gujarat and Ors. MANU/SC/1006/1995 : 1995(1)SCALE653 , a Bench of three Judges of this Court considering the mandate of human right to shelter read it into Article 19(1)(e) and Article 21 of the Constitution of India to guarantee right to residence and settlement. Protection of life guaranteed by Article 21 encompasses within its ambit the right to shelter to enjoy the meaningful right to life. The Preamble to the Indian Constitution assures to every citizen social and economic justice and equity of status and of opportunity and dignity of person so as to fasten fraternity among all Sections of society in an integrated

Bharat. Article 39(b) enjoins the State that ownership and control of the material resources of the community are so distributed as to promote welfare of the people by securing social and economic justice to the weaker Sections of the society to minimise inequality in income and endeavour to eliminate inequality in status. Article 46 enjoins the State to promote with special care social, economic and educational interests of the weaker Sections of the society, in particular, Schedules Castes and Scheduled Tribes. Right to social and economic justice conjointly commingles with right to shelter as an inseparable component for meaningful right to life. It was therefore, held that right to residence and settlement is a fundamental right under Article 19(1)(e) and it is a facet of inseparable meaningful right to life under Article 21. Food, shelter and clothing are minimal human rights. The State has undertaken as its economic policy of planned development of massive housing schemes. The right to allotment of houses constructed by the Housing Board to the weaker Sections, lower income- group people under Lower Income Group Scheme, was held to be constitutional strategy, an economic programme undertaken by the State and that the weaker Sections are entitled to allotment as per the scheme..

5. In *Shantistar Builders v. Narayan Khimala Totame and Ors.* MANU/SC/0115/1990 : AIR1990SC630 , another Bench of three Judges had held that basic needs of man have traditionally been accepted to be three -food, clothing and shelter. The right to life is guaranteed in any civilised society. That would take within its sweep the right to food, the right to clothing, the right to descent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For an animal it is the bare protection of the body; for a human being it has to be a suitable accommodation which would allow him to grow in every aspect -physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well-built comfortable house but a reasonable home, particularly for people in India can even be mud-built thatched house or a mud-built fire-proof accommodation. When the urban land under Sections 20 and 21 of the Urban Land Ceiling Act was exempted subject to the condition of constructing houses to weaker Sections by the builders, this Court recognised the above right to shelter as an in-built right to life under Section 21 and upheld the validity of exemption and gave directions to effectively implement the scheme. In *Olga Tellis and Ors. v. Bombay Municipal Corpn. and Ors.* MANU/SC/0039/1985 : AIR1986SC180 considering the right to dwell on pavements or in slums by the indigent was accepted, as a part of right to life enshrined under Article 21 and ejection of them from the place nearer to their work would be deprivation of their right to livelihood. They will be deprived of their livelihood if they are evicted from their slum and pavement dwellings. Their eviction tantamounts to deprivation of their life. The Constitution Bench had held that if the right to livelihood is not treated as a traditional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. The deprivation, therefore, must be consistent with the procedure established by law. It was further held that which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. In *Francis Coralie v. Union Territory of Delhi* MANU/SC/0517/1981 : 1981CriLJ306 considering detention under Article 22 and its effect on Article 21, this Court held that the right to life includes the right to live with human dignity and all that goes alongwith it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading. Writing and expressing oneself in diverse forms, free movement and commingling with fellow human beings are part of the right to life with human dignity and they are components of the right to life.

6. In *Gauri Shanker and Ors. v. Union of India and Ors.* MANU/SC/0010/1995 : AIR1995SC55 , in the context of eviction of a tenant under the Delhi Rent Control Act, this Court observed that the right to shelter is not Constitutionally guaranteed right. Restrictions on the right to shelter placed by the statute on the statutory tenants were not violative of Article 21. The ratio must be understood in the light of the statutory operation under the Rent Control Act.

7. ' In *State, of Karnataka and Ors. v. Narasimhamurthy and Ors.* MANU/SC/0013/1996 : AIR1996SC90 , this Court held that right to shelter is a fundamental right under Article 19(1) of the Constitution. To make the right meaningful to the poor, the State has to provide facilities and opportunity to build houses. Acquisition of the land to provide house sites to the poor houseless is a public purpose as it is the

Constitutional duty of the State to provide house sites to the poor.

8. In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any Civilised society implies the right to food, water, decent environment education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live, should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being. Want of decent residence, therefore, frustrates the very object of the Constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself. To bring the Dalits and Tribes into the mainstream of national life providing these facilities and opportunities to them is the duty of the State as fundamental to their basic human and constitutional rights.

9. In *Kurra Subba Rao v. Distt. Collector MANU/AP/0126/1975* Andhra Pradesh High Court considering the obligation of the State to provide shelter to the weaker Sections of the society by acquiring lands for public purpose and distribution thereof had held that in all stages of social development a man must have some property or capacity for acquiring property. There could be no individual liberty without a minimum of property. People who cannot buy bread cannot follow the suggestion that they can eat cake. People bowed under the weight of poverty are unlikely to stand up for their constitutional rights. Welfare State exists not only to enable the people to eke out their livelihood but also to make it possible for them to lead good life. State strives to provide facilities and opportunities to them to improve excellence transcending all Sections with diversities in the society so as to enable them to lead good life assuring dignity of person under legal order. Equality of opportunity is not simply a matter of legal equality. Its existence depends not merely on the absence of disabilities but on the presence of abilities. Liberty is freedom and justice is equality which are the bedrock of modern democracy. The challenge of social justice is the challenge for equal opportunity not in form but in substance and the challenge of social justice a constitutional mandate has to be accepted and answered on the basis of day-to-day experience of the performance of law, articulating diverse provisions of the Constitution, while meeting the challenging situation in the society. The Directive Principles are beacon light leading to reach the ultimate goal of economic equality and social justice to all. It accordingly had upheld the power of the State Government invoking urgency clause under Section 17(4) of the Act when the State discharged its constitutional mandate to provide shelter to the poor.

10. The need to provide right to shelter is not peculiar to India but is a global problem being faced by all the developing and developed nations. In 1980 the United Nations General Assembly in its Resolution No. 35/76 expressed the view that an international year devoted to the problems of homeless people in urban and rural areas of the developing countries could be an appropriate occasion to focus attention of the international community on those problems. In Resolution No. 37/221 of 1987 as the International Year of Shelter for the Homeless was adopted and request was made to member States to sustain the momentum generated during the programme for the year and to continue implementing concrete and innovative activities aimed at improving the shelter and neighborhoods of the poor and the disadvantaged and requested the Secretary General of UNO to keep it informed periodically on the progress achieved. At the close of the international year the General Assembly received and noted in Resolution No. 42/191 the reports of the

Executive Director of the U.N. center for Human Settlement entitled "Shelter and services for the poor - a call to action". It recognised that adequate and secure shelter is a basic human right and is vital for the fulfilment of human aspirations and that a squalid residential environment is a constant threat to health and to life itself, thereby constituting a drain on human resources, a nation's most valuable asset. The General Assembly expressed deep concerned(sic) about the existing situation in which, in spite of efforts of Government at the national and local levels and of international organisations, more than one billion people find themselves either completely without shelter or living in homes unfit for human habitation; and that owing to prevailing demographic trends, the already formidable problems will escalate in the coming years unless concerted and determined efforts are taken immediately. As a consequence, Global Strategy for Shelter to the Year 2000, including a plan of action for its implementation, monitoring and evaluation was checked out and its objective would be to stimulate measures to facilitate adequate shelter for all by the year 2000. It requested the executive director of the center for Human Settlements to prepare a proposal for such a global strategy and called upon the Commission on Human Settlements to formulate the strategy of consideration by the Assembly. In furtherance thereof, guidelines have been laid to take steps at the national level which was accepted by the Assembly. Guidelines which are relevant for the present purpose are as under:

2. ...The objectives should be based on a comprehensive view of the magnitude and nature of the problem and of the available resource base, including the potential contribution of men and women. In addition to finance, land, manpower and institutions, building materials and technology also have to be considered irrespective of whether they are held by the public or private, formal, or informal sector.
3. The objective of the shelter sector need to be linked to the goals of overall economic policy, social policy, settlement policy and environmental policy.
4. The strategy need to outline the action through which the objectives can be met. In an enabling strategy actions such as the provision of infrastructure may mean the direct involvement of the public sector in shelter construction. The objective of "facilitating adequate shelter for all" also implies that direct government support should mainly be allocated to the most needy population groups.
6. Another important component is the development of administrative, institutional and legislative tasks that are the direct responsibility of the Government, for example, land registration and Regulation of construction.
8. The appropriate institutional framework for the implementation of a strategy must be identified, which may require much institutional reorganisation. Each agency involved must have a clear understanding of its role within the overall organisation framework and of the tasks expected of it. Mechanisms for the co-ordination of inter and intra-agency activities need to be developed. Mechanism such as shelter coalitions are recommended and may be developed in partnership with the private and non-governmental sectors. Finally, arrangements for the continuous monitoring, review and revision of the strategy must be developed.
14. Prepare a plan of action in consultation and partnership with nongovernmental organisations, people and their representatives, which:
 - (a) Lists the activities that are the direct responsibility of the public sector;
 - (b) Lists the activities to be taken to facilitate and encourage the other actors to carry out their part of the task;
 - (c) Outlines resource allocation to the aforementioned activities;
 - (d) Outlines the institutional arrangements for the implementation, co-ordination, monitoring and review of the strategy;
 - (e) Outlines a Schedule for the activities of the various agencies.
11. Guidelines or steps to be taken at the international level were formulated. Guideline Nos. 15 to 17 are relevant and are stated thus:
 15. International action will be necessary to support the activities of countries in their endeavour to improve the housing situation of their poor and disadvantaged inhabitants. Such assistance should support national programmes and use know-how available locally and within the international community.
 17. Mutual co-operation and exchange of information and expertise between developing countries in human settlement work stimulate and enrich national human settlement work.[Vide "Encyclopedia of Human Rights" by Edward Lawson].
12. In Encyclopaedia of Social Work in India [Volume 2] at page 82 it stated that supply of housing in India

does not fully meet the present needs of the population whether in terms of location, size, tenure, type or facilitation. The share of housing sector in India's economy is fluctuating from year to year. Of the total housing stock of 7.44 crore dwelling units available in 1971 in rural areas, 0.80 crores were unserviceable kutcha, 2.44 crores were serviceable kutcha, 2.79 crores were semi- pucca and only 1.41 crores units were pucca. The housing accommodation as a whole in the rural areas as dwelling units is inadequate. With ever-growing population and migration of poor to urban areas for livelihood, slums are getting escalated and resultantly with the passage of time housing problem is becoming increasingly acute. Under Minimum Needs Programme provision of house sites and construction of houses for rural landless poor was envisaged in the Sixth Plan 1980-85 which continued in the Seventh Plan. Finances are provided for construction of the houses under the Planned Expenditure.

13. Indira Awas Yojana is evolved to provide housing accommodation on war footing exclusively for the Scheduled Castes and Scheduled Tribes. Their appalling housing condition is judicially taken notice by this Court upholding the pragmatic approach of Chinnappa Reddy, J. in *Kasiredi Papaiah v. Government of A. P.* MANU/AP/0126/1975 : AIR1975AP269 as well in the following words:

That the housing conditions of Harijans all over the country continue to be miserable even today is a fact of which courts are bound to take judicial notice. History has made it urgent that, among other problems, the problem of housing Harijans should be solved expeditiously. The greater the delay the more urgent becomes the problem. Therefore, one can never venture to say that the invocation of emergency provisions of the Land Acquisition Act for providing house sites for Harijans is bad merely because the officials entrusted with the task of taking further action in the matter are negligent or tardy in the discharge of their duties, unless, of course, it can be established that the acquisition itself is made with an oblique motive. The urgent pressures of history are not to be undone by the inaction of the bureaucracy. I am not trying to make any pontific pronouncements. But I am at great pains to point out that provision for house sites for Harijans is an urgent and pressing necessity and that the invocation of the emergency provisions of the Land Acquisition Act cannot be said to be improper, in the absence of mala fides, merely because of the delay on the part of some government officials.

14. What was said by Chinnappa Reddy, J. in the context of provisions of housing accommodation to Harijans is equally applied to the problem of providing housing accommodation to all persons in the country in *State of U.P. v. Pista Devi and Ors.* MANU/SC/0401/1986 : [1986]3SCR743 holding that today having regard to the enormous growth of population urgency clause for planned development in urban area was upheld by two-Judge bench. The ratio of *Kasiredi Papaiah's* case was quoted with approval by a three-Judge Bench in *Deepak Pahwa v. Lt. Governor of Delhi* MANU/SC/0228/1984 : [1985]1SCR588 . The delay by the officials was held to be not a ground to set at naught the power to exercise urgency clause in both the above decisions. It would thus be clear that housing accommodation to the Dalit and Tribes is in acute shortage and the State has undertaken as its economic policy under Planned Expenditure to provide shelter to them on war-footing, in compliance with the Constitutional obligation undertaken as a member of the U.N.O. to the resolutions referred to hereinbefore.

15. The question, therefore, is whether invocation of urgency clause under Section 17(4) dispensing with inquiry under Section 5-A is arbitrary or is unwarranted for providing housing construction for the poor. In *Aflatoon and Ors. etc. v. Lt. Governor, Delhi and Ors.* MANU/SC/0437/1974 : [1975]1SCR802 a Constitution Bench of this Court had upheld the exercise of the power by the State under Section 17(4) dispensing with the inquiry under Section 5-A for the planned development of Delhi. In *Smt. Pista Devi's* case, this Court while considering the legality of the exercise of the power under Section 16(4) exercised by the State Government dispensing with the inquiry under Section 5-A for acquiring housing accommodation for planned development of Meerut, had held that providing housing accommodation is national urgency of which Court should take judicial notice. The pre-notification and post-notification delay caused by the concerned officer does not create a cause to hold that there is no urgency.. Housing conditions of Dalits all over the country continue to be miserable even till day is a fact of which courts are bound to take judicial notice. The ratio of *Deepak Pahwa's* case (supra) was followed. In that case a three-Judge Bench of this Court had upheld the notification issued under Section 17(4), even though lapse of time of 8 years had occurred due to inter-Departmental discussions before receiving the notification. That itself was considered to be a ground to invoke urgency clause. It was further held that delay on the part of the lethargic officials to take further action in the matter of acquisition was not sufficient to nullify the urgency which existed at the

time of the issuance of the notification and to hold that there was never any urgency. In *Jaga Ram and Ors. v. State of Haryana and Ors.* MANU/SC/0571/1971 : [1971]3SCR871 this Court upheld the exercise of the power of urgency under Section 17(4) and had held that the lethargy on the part of the officers at an early stage was not relevant to decide whether on the day of the notification there was urgency or not. Conclusion of the Government that there was urgency, though not conclusive, is entitled to create weight. In *Deepak Pahwa's case* this Court had held that very often persons interested in the land proposed to be acquired may make representations to the concerned authorities against the proposed writ petition that is bound to result in multiplicity of enquiries, communications and discussions leading invariably to delay in the execution of even urgency projects. Very often delay makes the problem more and more acute and increases urgency of the necessity for acquisition. *Rajasthan Housing Board and Ors. v. Shri Kishan and Ors.*

MANU/SC/0466/1993 : [1993]1SCR269 this Court had held that it must be remembered that the satisfaction under Section 17(4) is subjective one and that so long as there is material upon which Government could have formed the said satisfaction fairly, the Court would not interfere nor would it examine the material as an appellate authority. In *State of U.P. and Ors. v. Keshav Prasad Singh* MANU/SC/0500/1995 : AIR1995SC2480 this Court had held that the Government was entitled to exercise the power under Section 17(4) invoking urgency clause and to dispense with inquiry under Section 5-A when the urgency was noticed on the facts available on record. In *Narayana Govind Gavate's case* (supra) a three-Judge Bench of this Court had held that Section 17(4) cannot be read in isolation from Section 4(1) and Section 5-A of the Act. Although 30 days from the notification under Section 4(1) are given for filing objections under Section 5-A inquiry thereunder unduly gets prolonged. It is difficult to see why the summary inquiry could not be completed quite expeditiously. Nonetheless, this Court held the existence of prima facie public purpose such as the one present in those cases before the Court, could not be successfully challenged at all by the objectors. It further held that it was open to the authority to take summary inquiry under Section 5-A and to complete in inquiry very expeditiously. It was emphasised that:

...The mind of the Officer or authority concerned has to be applied to the question whether there is an urgency of such a nature that even the summary proceedings under Section 5-A of the Act should be eliminated. It is not just the existence of an urgency but the need to dispense with an inquiry under Section 50A which has to be considered.

16. It would thus be seen that this Court emphasised the holding of an inquiry on the facts peculiar to that case. Very often the officials, due to apathy in implementation of the policy and programmes of the Government, themselves adopt dilatory tactics to create cause for the owner of the land to challenge the validity or legality of the exercise of the power to defeat the urgency existing on the date of taking decision under Section 17(4) to dispense with Section 5-A inquiry.

17. It is true that there was pre-notification and post-notification delay on the part of the officers to finalise and publish the notification. But those facts were present before the Government when it invoked urgency clause and dispensed with inquiry under Section 5-A. As held by this Court, the delay by itself accelerates the urgency: Larger the delay, greater be the urgency. So long as the unhygienic conditions and deplorable housing needs of Dalits, Tribes and the poor are not solved or fulfilled, the urgency continues to subsist. When the Government on the basis of the material, constitutional and international obligation, formed its opinion of urgency, the Court, not being an appellate forum, would not disturb the finding unless the court conclusively finds the exercise of the power mala fide. Providing house sites to the Dalits, Tribes and the poor itself is a national problem, and a constitutional obligation. So long as the problem is not solved and the need is not fulfilled, the urgency continues to subsist. The State is expending money to relieve the deplorable housing condition in which they live by providing decent housing accommodation with better sanitary conditions. The lethargy on the part of the officers for pre and post-notification delay would not render the exercise of the power to invoke urgency clause invalid on that account.

18. In every acquisition by its very compulsory nature for public purpose, the owner may be deprived of the land, the means of his livelihood. The State exercises its power of eminent domain for public purpose and acquires the land. So long as the exercise of the power is for public purpose, the individual's right of an owner must yield place to the larger public purpose. For compulsory nature of acquisition, Sub-section (2) of Section 23 provides payment of solatium to the owner who declines to voluntarily part with the possession of land. Acquisition in accordance with the procedure is a valid exercise of the power. It would not, therefore, amount to deprivation of right to livelihood. Section 23(1) provides compensation for the acquired

land at the prices prevailing as on the date of publishing Section 4(1) notification, to be quantified at later stages of proceedings. For dispensation or dislocation interest is payable under Sections 23(1-A) as additional amount and interest under Sections 31 and 28 of the Act to recompensate the loss of right to enjoyment of the property from the date of notification under Section 23(1-A) and from the date of possession till compensation is deposited. It would thus be clear that the plea of deprivation of right to livelihood under Article 21 is unsustainable.

19. Thus considered, we hold that we do not find any illegality in the notification warranting interference. The appeal is accordingly dismissed but, in the circumstances, without costs.

C.A. 12123 /95 @ SLP (C) No. 6831/93

20. In view of the decision rendered above in Civil Appeal No. 12122/95 @ SLP (C) No. 4896/93; this appeal is also dismissed but, in the circumstances, without costs.

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3. Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan & Ors

MANU/SC/0051/1997

Equivalent Citation: 1996VIIIAD(SC)183, AIR1997SC152, (1997)3GLR1998, JT1996(10)SC485, 1996(7)SCALE770, (1997)11SCC121, [1996]Supp7SCR548

IN THE SUPREME COURT OF INDIA

Civil Appeal No. 12992 of 1996

Decided On: 11.10.1996

Appellants:**Ahmedabad Municipal Corporation**

Vs.

Respondent: **Nawab Khan Gulab Khan and others**

Hon'ble Judges/Coram:

K. Ramaswamy and G.B. Patnaik, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Arun Jaitley, Shakil Ahmed Syed and Kirti Raval, Advs.

For Respondents/Defendant: D. Dave, K. Sharda Devi, T.R. Andhyarujina and Yashank Adhyaru, Advs.

Subject: Constitution

Catch Words

Mentioned IN

Acts/Rules/Orders:

Constitution of India - Article 14, Constitution of India - Article 19(1), Constitution of India - Article 21, Constitution of India - Article 38, Constitution of India - Article 39, Constitution of India - Article 41, Constitution of India - Article 46, Constitution of India - Article 243, Constitution of India - Article 261; Urban Land Ceiling and Regulation Act, 1976

Cases Referred:

Shantistar Builders v. Narayan Khimalal Totame MANU/SC/0115/1990; P.G. Gupta v. Stat eof Gujarat MANU/SC/1006/1995; Maha Gujarat Hawkers Vyapar Mahajans etc. v. Ahmedabad Municipal Corporation; Olga Tellis v. Municipal Corporation of Greater Bombay MANU/SC/0039/1985

Prior History:

From the Judgment and Order dated 20.2.91 of the Gujrat High Court in S.C.A. No. 5351 of 1991.

Case Note:

(i) Constitution - removal of encroachment - Bombay Municipal Corporation Act, 1955 - whether respondent liable to ejection from encroachments of pavements of roads and principles of natural justice to be followed - competent authority duty bound to remove encroachments on pavements of public street obstructing free flow of traffic or passing or re-passing by pedestrians - petitioners have fundamental to carry on trade of their choice but not on particular place - pavement cannot be used

for private purpose - opportunity to remove encroachment voluntarily by encroachers to be given - in case of resistance appropriate and reasonable force can be used to have encroachment removed - action taken by appellant in removing encroachment not violative of principles of natural justice.

(ii) Alternative settlement - whether respondent entitled to alternative settlement before ejection - it may not be necessary to provide alternative accommodation at State's expense in all cases as condition for ejection of encroacher - Municipal Corporation has constitutional and statutory duty to provide means for settlement and residence by allotting surplus land - opportunity to be given to petitioners to opt for any scheme - 21 day's notice to be served on encroachers for ejecting them from present encroachment.

ORDER

1. Leave granted.

2. This appeal by special leave arises from the judgment and order made on February 20, 1991 by the Gujarat High Court in Special Civil Application No. 5351 of 1982.

3. The admitted facts are that 29 persons had filed the writ petition in the High Court. They are pavement-dwellers in unauthorised occupation of footpaths of the Rakhial Road in Ahmedabad which is a main road. They have constructed huts thereon. When the Corporation sought to remove their encroachments on December 10, 1982, they approached the High Court under Article 226 of the Constitution. The High Court granted interim stay of removal of the encroachment. By the impugned judgment, the High Court directed the Municipal Corporation not to remove their huts until suitable accommodation was provided to them. The High Court also further held that before removing the unauthorised encroachments the procedure of hearing, consistent with the principles of natural justice should be followed.

4. We requested Shri Dushyant Dave, the learned senior Counsel of the Bar to assist the Court as amicus curiae and Smt. K. Sharda Devi has been assigned as legal Aid counsel to argue on the behalf of the respondents since they are not appearing either in person or through counsel. By order dated September 11.1995 this Court directed the appellant thus:

We think that the Municipal Corporation should frame a Scheme to accommodate them at the alternative places so that the hutment can shift their residence to the places of accommodation provided by the Corporation to have permanent residence. Corporation is accordingly directed to frame a scheme and place before this Court within two months from today.

5. Pursuant thereto, a Scheme has been framed and placed before this Court. It would appear that only 10 persons out of original petitioners in the High Court whose names have been mentioned in the supplementary affidavit are residing there; of them Nurmahommad Samsuddin and Hakimuddin Karimudin have converted their huts into commercial units run on the pavement. This road is 80 feet wide with 10 and 8 feet wide foot-paths on two sides of the road. At present 56 persons, obviously including 10 original encroachers are in occupation of hutments erected on the footpaths and whereabouts of 19 original petitioners who have left the area in consideration of money they have accepted, are not known. In their place, others have occupied the huts by making payments.

6. Shri Dushyant Dave has also further submitted proposals as alternative to the Scheme. Having heard the counsel on both sides, we reserved the case for consideration. At the outset, we express our deep appreciation for the valuable assistance rendered by Shri Dushyant Dave and also for the fair arguments advanced by Shri Arun Jaitley, learned senior Counsel appearing for the Corporation.

7. The questions for consideration are : (1) whether the respondents are liable to ejection from the encroachments of pavements of the roads and whether the principle of natural justice, viz., audi alteram

partem requires to be followed and, if so, what is its scope and content? (2) whether the appellant is under an obligation to provide permanent residence to the hutment dwellers and, if so, what would be the parameters in that behalf? The questions are dealt with later, on the first question, Sections 63(1)(19) of the Bombay Municipal Corporation Act, 1955 (as applicable to Gujarat) or Section 231 of the Bombay Provincial Municipal Corporation Act (BPMC Act) empowers the Commissioner to remove any wall, fence, rail, post, step, booth or other structure or fixture, permanent or moveable, which shall be erected or set up in or upon any street or upon or over any open channel, drain, well or tank, contrary to the provisions of Sub-section (1) of Section 312 after the same came into force in the city of Ahmedabad or in the Super-bazars after the Bombay Municipal (Extension of Limits) Act, 1950 came into force or in the tended suburbs after the date of the coming into force of the Bombay Municipal Act, 1955 (for short, the "Act"). The power to remove encroachments on street, pavement or footpath was conferred upon the Commissioner, the highest officer of the Municipal Corporation, who acts with high degree of responsibility and duty to implement the provisions of the Act. Every citizen has a right to pass or repass on the pavement, street, footpath as general amenity for convenient traffic. A Constitution Bench of this Court in *Sodan Singh Etc. Etc. v. New Delhi Municipal Committee and Anr. Etc.* [1989] 2 SCR 1038 was confronted with and had considered the question "can there be at all a fundamental right of a citizen to occupy a particular place on the pavement where he can squat and engage in trading business? We have no hesitation in answering the issue against the petitioners. The petitioners do have the fundamental right to carry on a trade or business of their choice, but not to do so on a particular place. Hawkers cannot be allowed to, or be permitted to, carry on trade or business on every road in the city. If the road is not wide enough to conveniently accommodate the traffic on it, no hawking may be permitted at all, or may be sanctioned only once a week, say on Sundays when the rush considerably thins out." Thereby, this Court has minimised the hardship to pedestrians and the hawkers in doing their business by hawking on the public street and at the same time has protected the public from free passes or re-passes of the traffic on the road, pavement or footpath. In *Olga Tellis v. Municipal Corporation of Greater Bombay* MANU/SC/0039/1985 : AIR1986SC180 , another Constitution Bench had held that "we are, therefore of the opinion that the procedure prescribed by Section 314 of the Bombay Municipal Corporation Act for removal of the encroachment on the footpath over which the public has right of passage cannot be regarded as unreasonable, unfair or unjust. There is no static measure of reasonableness which can be applied to all situations alike. Indeed, the question "Is this procedure reasonable?" implies and postulates the inquiry as to whether the procedure prescribed is reasonable in the circumstances of the case."

8. It is for the Court to decide in exercise of its constitutional power of judicial review whether the deprivation of life or personal liberty in a given case is by procedure which is reasonable, fair and just or it is otherwise. Footpath, street or pavement are public property which are intended to serve the convenience of general public. They are not laid for private use and indeed, their use for a private purpose frustrates the very object for which they are carved out from portions of public roads. The main reason for laying out pavement is to ensure that the pedestrians are able to go about their daily affairs with a reasonable measure of safety and security. That facility, which has matured into a right of the pedestrians, cannot be set at naught by allowing encroachments to be made on the pavements. The claim of the pavement dwellers to construct huts on the pavement or road is a permanent obstruction to free passage of traffic and pedestrians' safety and security. Therefore, it would be impermissible to permit or to make use of the pavement for private purpose. They should allow passing and re-passing by the pedestrians. No one has a right to make use of a public property for the private purpose without the requisite authorisation from the competent authority. It would, therefore, be but the duty of the competent authority to remove encroachments on the pavement or footpath of the public street obstructing free flow of traffic or passing or re-passing by the pedestrians.

9. This view firmly laid down by this Court in *Olga Tellis* case thus:

No person has a right to encroach by erecting a structure or otherwise on footpaths and pavements or other place reserved or earmarked for a public purpose like (for e.g. garden or playground) and that the provision contained in Section 314 of the Bombay Municipal Corporation Act is not unreasonable in the circumstances of the case.

10. The Constitution does not put an absolute embargo on the deprivation of life or personal liberty but such a deprivation must be according to the procedure, in the given circumstances, fair and reasonable. To become fair, just and reasonable, it would not be enough that the procedure prescribed in law is a formality. It must be pragmatic and realistic to meet the given fact-situation. No inflexible rule of hearing and due application of mind can be insisted upon in every or all cases. Each case depends upon its own backdrop. The removal of encroachment needs urgent action. But in this behalf what requires to be done by the competent authority is to ensure constant vigil on encroachment of the public places. Sooner the encroachment is removed when sighted, better would be the facilities or convenience for passing or re-passing of the pedestrians on the pavements or footpaths facilitating free flow of regulated traffic on the road or use of public places. On the contrary, the longer the delay, the greater will be the danger of permitting the encroachers claiming semblance of right to obstruct removal of the encroachment. If the encroachment is of a recent origin the need to follow the procedure of principle of natural justice could be obviated in that no one has a right to encroach upon the public property and claim the procedure of opportunity of hearing which would be a tedious and time-consuming process leading to putting a premium for high-handed and unauthorised acts of encroachment and unlawful squatting. On the other hand, if the Corporation allows settlement of encroachers for a long time for reasons best known to them, and reasons are not far to seek, then necessarily a modicum of reasonable notice for removal, say two weeks or 10 days, and personal service on the encroachers or substituted service by fixing notice on the property is necessary. If the encroachment is not removed within the specified time, the competent authority would be at liberty to have it removed. That would meet the fairness of procedure and principle of giving opportunity to remove the encroachment by the encroachers. On their resistance, necessarily appropriate and reasonable force can be used to have the encroachment removed. Thus considered, we hold that the action taken by the appellant-Corporation is not violative of the principle of natural justice.

11. It is not in dispute that Rakhial Road is one of the important main road in the city of appellant-Corporation and it needs removal of encroachment for free passing and re-passing of the pedestrians on the pavements/footpaths. But the question is : whether the respondents are entitled to alternative settlement before ejection of them?

12. Article 19(1)(e) accords right to residence and settlement in any part of India as a fundamental right. Right to life has been assured as a basic human right under Article 21 of the Constitution of India. Article 25(1) of the Universal Declaration of Human Rights declares that everyone has the right to standard of living adequate for the health and well-being of himself and his family; it includes food, clothing, housing, medical care and necessary social services. Article 11(1) of the International Covenant on Economic, Social and Cultural Rights lays down that State parties to the Covenant recognise that everyone has the right to standard of living for himself and his family including food, clothing, housing and to the continuous improvement of living conditions. In *Chameli Singh and Ors. v. State of U.P. and Anr.* MANU/SC/0286/1996 : AIR1996SC1051 , a Bench of three Judges of this Court had considered and held that the right to shelter is a fundamental right available to every citizen and it was read into Article 21 of the Constitution of India as encompassing within its ambit, the right to shelter to make the right to life more meaningful. In paragraph 8 it has been held thus:

In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as

to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civil community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a culture being. Want of decent residence, therefore, frustrates the very object of the Constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself.

13. Socio-economic justice, equality of status and of opportunity and dignity of person to foster the fraternity among all the sections of the society in an integrated Bharat is the arch of the Constitution set down in its preamble. Articles 39 and 38 enjoins the State to provide facilities and opportunities. Articles 38 and 46 of the Constitution enjoin the State to promote welfare of the people by securing social and economic justice to the weaker sections of the society to minimise inequalities in income and endeavour to eliminate inequalities in status. In that case, it was held that to bring the Dalits and the Tribes into the mainstream of national life, the State was to provide facilities and opportunities as it is the duty of the State to fulfil the basic human and constitutional rights to residents so as to make the right to life meaningful. In *Shantistar Builders v. Narayan Khimalal Totame* MANU/SC/0115/1990 : AIR1990SC630 , another Bench of three Judges had held that basic needs of man have traditionally been accepted to be three-food, clothing and shelter. The right to life is guaranteed in any civilised society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For an animal, it is the bare protection of the body; for a human being, it has to be a suitable accommodation which would allow him to grow in every aspect-physical, mental and intellectual. The surplus urban-vacant land was directed to be used to provide shelter to the poor. In *Olga Tellis case* (supra), the Constitution Bench had considered the right to dwell on pavements or in slums by the indigent and the same was accepted as a part of right to life enshrined under Article 21; their ejection from the place nearer to their work would be deprivation of their right to livelihood. They will be deprived of their livelihood if they are evicted from their slum and pavement dwellings. Their eviction tantamounts to deprivation of their life. The right to livelihood is a traditional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude life of its effective content and meaningfulness but it would make life impossible to live. The deprivation of right to life, therefore, must be consistent with the procedure established by law. In *P.G. Gupta v. State of Gujarat* MANU/SC/1006/1995 : 1995(1)SCALE653 , another Bench of three Judges had considered the mandate of human right to shelter and read it into Article 19(1)(e) and Article 21 of the Constitution and the Universal Declaration of Human Rights and the Convention of Civic, Economic and Cultural Rights and had held that it is the duty of the State to construct houses at reasonable cost and make them easily accessible to the poor. The aforesaid principles have been expressly embodied and in-built in our Constitution to secure socio-economic democracy so that everyone has a right to life, liberty and security of the person. Article 22 of the Declaration of Human Rights envisages that everyone has a right to social security and is entitled to its realisation as the economic, social and cultural rights are indispensable for his dignity and free development of his personality. It would, therefore, be clear that though no person has a right to encroach and erect structures or otherwise on footpath, pavement or public streets or any other place reserved or earmarked for a public purpose, the State has the Constitutional duty to provide adequate facilities and opportunities by distributing its wealth and resources for settlement of life and erection of shelter over their heads to make the right to life meaningful, effective and fruitful. Right to livelihood is meaningful because no one can live without means of this living, that is the means of livelihood. The deprivation of the right to life in that context would not only denude life of effective content and meaningfulness but it would make

life miserable and impossible to live. It would, therefore, be the duty of the State to provide right to shelter to the poor and indigent weaker sections of the society in fulfilment of the constitutional objectives.

14. That apart, Section 284(1) of the Act also imposes a statutory duty on the Corporation to make provision for accommodation enjoining upon the Commissioner, if it is satisfied that within any area or any part of the City it is expedient to provide housing accommodation for the poor classes and that such accommodation can be conveniently provided without making an improvement scheme, it shall cause such areas to be defined on a plan. The Corporation is required to pass a resolution authorising the Commissioner who shall thereupon have power to provide such an accommodation either by erecting buildings or in any other manner on any land belonging to the Corporation or any land acquired by the Corporation for the purpose or by conversion of any building belonging to the Corporation into dwelling for poor classes or by enlarging, altering or repairing or improving any buildings, which have, or an estate or interest which has been acquired by the Corporation. This duty is apart of the Constitutional mandate, Under the Urban Ceiling Act, the excess urban vacant land is earmarked to elongate the above objective.

15. The appellant-Corporation has stated that in its resolution No. 544 dated August 17, 1976 it was resolved that no pavement dwellers/hut dwellers existing as on May 1, 1976 would be removed by the corporation without providing alternative accommodation. This cut off date was introduced for the reason that they had conducted a detailed survey of slum-dwellers residing in the city and had identified 81,255 hutments/pavements comprising of 4,15,000 slum dwellers. They were photographed and identity cards were given to them so that they could get the protection from removal until alter accommodations were provided to them. Out of 81,255 hutments, 1864 are pavement dwelling units. In furtherance thereof, they evolved several schemes. Of them three schemes are in operation. The first scheme relates to the open plots at Narol. As per that scheme plots of land each admeasuring 25 square metres had under Urban Land Ceiling and Regulation Act, 1976 comprised in the total land of an extent of 38,749 square metres in Survey No. 41, were directed to be allotted to the urban poor. The Government by its resolution has decided that an urban poor family whose annual income is below Rs. 18,000 is entitled to the allotment of said plots. They have suggested in their affidavit filed by Rasikbhai, Deputy Commissioner of the appellant-Corporation that they had addressed the Collector of allotment regarding 35 plots reserved for hutments. It is further stated that if the 10 persons who were original petitioners in the writ petition are willing to vacate the present encroachments they are prepared to have the 25 sq. mtr. plots in Narol Scheme allotted to them. The second alternative scheme suggested was the Vinzol Site and Services Scheme evolved by the Gujarat Slum Clearance Board. Under the scheme, plots were available at Vinzol and Vivekananda Nagar respectively. At Vinzol, cost of a plot admeasuring 32 sq. metres, of land is Rs. 9,468. The initial payment to be made is Rs. 3,941 and thereafter monthly installment of Rs. 107 for 11 years is required to be paid. The accommodation provided in that scheme includes plinth area plus W.C. In the Slum Clearance Scheme of Vivekananda Nagar, plots admeasuring 19.52 sq. mtr. of land would be available at a cost of Rs. 8,910. The initial payment is Rs. 5,282 and the monthly installment payable thereafter is of Rs. 145 for a period of 11 years. It includes plinth area plus W.C. and Chokadi. There are around 700 to 1000 unallotted units available and if the respondents are willing they would be provided with the accommodation in the said Scheme. Thirdly, it was stated that there are hutment dwelling units at Vinzol/Lambha Part I and Lambha Part II of Economically Weaker Sections Scheme operated by Gujarat Slum Clearance Board. Therein, at Vinzol plot admeasuring 15.50 sq. mtrs. or 14.76 sq. mtrs. of land at Lambha with facility of one room, W.C. and Chokadi are available. 142 tenements are available at Vinzol. 140 tenements are available at Lambha Part I and 150 tenements are available at Lambha part II. This was the information furnished by the Gujarat Slum Clearance Board. The schemes are floated for economically weaker sections of the society and the cost of each tenement at Vinzol is Rs. 16,187 and of tenement at Lambha Part I and Part II is Rs. 17,094 and Rs. 18,030 respectively. The initial payment to be made for the accommodation at Vinzol is Rs. 6604 and in respect of tenement at Lambha Part I is Rs. 7,476 and for Part II it is Rs. 7,200. The monthly installment for Vinzol tenement is Rs. 131 to be paid for 9 years 7 months and for Lambha Part I, the installment is of Rs. 141 per month to be paid for 10 years and for Part II it is Rs. 142 per month to be paid for 14 years. The annual family income limit for these tenements is also Rs. 18,000. Those family units of Vinzol who qualify the income criteria are eligible for allotment.

16. In the statement made on behalf of the hutment dwellers, Shri Dushyant Dave has stated that the aforesaid units are situated at a far away place and direction to vacate the pavements and occupation of the premises thereat would deprive the respondents of their livelihood and render them without shelter and means of livelihood. A further affidavit was filed on behalf of the Corporation wherein it is stated that all infrastructure facilities are available at the respective places. They are fully developed areas with all basic amenities. They are at a distance of about 8 kms. from the city. Near about those places are many factories and other commercial organisations where the respondent-encroachers can find out their livelihood by working in the factories. Public transport is also available there. It was also stated, that Vinzol, Vivekananda Nagar and Lambha are developed areas and, therefore, it is easy to find out work in the vicinity of those areas. About 15,000 persons are at present living in each of the three Schemes, with all basic amenities. Shri Dave has given suggestions and submitted that the Corporation should be directed to evolve the scheme under Section 284(i) of the Act to discharge the constitutional obligations and to provide near about the place in Rakhial Road so that the respondents would work in the neighbourhood and would eke out their livelihood. To this it was stated by the appellants that the open lands available near Rakhial Road were earmarked for the schools, park/public amenities and there is no vacant land in the nearby place.

17. Shri Dave further suggested that the Corporation would relax their census of 1976 and adopt 1991 census and all those who are residing in the city for at least 10 years prior to January 1, 1995 should be provided with built up accommodation so that it would provide an alternative viable right to residence. If the land belonging to the Corporation is available, the same could be implemented by constructing the houses. If it is not available, lands could be acquired and houses could be constructed and accommodation provided in terms of the directions given by this Court so that pavement dwellers would have right to residence and the planned construction could not be affected. It was stated in the additional affidavit of the respondents in this regard that in 1991 they had identified 5 lakhs slum dwellers or pavement dwellers out of population of 29 lakhs and for acquisition and construction of the houses, the budget estimates would be Rs. 220 crores. The Government has stopped giving assistance to the Corporation for construction of houses.

18. This Court in SLP No. 47-51/96 titled Maha Gujarat Hawkers Vyapar Mahajans Etc. v. Ahmedabad Municipal Corporation had given directions to regulate hawking. The Corporation has regulated, in terms of the said order, the hawking business on the pavements by dwellers in the city of Ahmedabad within the specified areas and identified some as non-hawking zones in the Scheme which is operated in the city of Ahmedabad. No direction in derogation thereof would be given permitting the pavement dwellers to convert the hutments for commercial purpose. It is also suggested that with the co-operation of the Non-Governmental Organisations and financial participation of the slum dwellers and industrialists the Corporation has introduced Slum networking Project. Under the scheme, they have provided 35,000 built up individual toilets in the slum areas. Subsidy component to the hutment dwellers has been raised to 90 per cent w.e.f. April 1, 1996.

19. As per the scheme, the following are the benefits provided in the slum areas for the hutment dwellers:

- (i) House-to-house water supply;
- (ii) House-to-house drainage connection;
- (iii) Full pavement of internal street;
- (iv) Individual toilet;
- (v) Provision of storm water drain;
- (vi) Solid waste management services;
- (vii) Street light, etc.

Besides the physical services, a package of community development services is also offered which includes:

- (i) Primary education;
- (ii) Primary health care;
- (iii) Income generating activities etc.

This project is estimated to cost Rs. 326 crores. A photocopy of the said Project Report dated July 1995 and prepared by H Parikh Consulting Engineers

The aforesaid benefits of the Project are proposed to be extended to all the slums except those situated on lands which are required for public purpose by the Corporation. With a view to provide these services in the slums and chawls situated on private lands, an amendment has also been proposed to the State Government in the BPMC Act to enable the Corporations to provide all essential services in the slums situated on the private lands without prejudice to the right, title and interest of the owner of the land and without affecting their rights to remove such hutments by following due process of law. This amendment is considered necessary to maintain health and sanitation in the slums situated on private lands and for improving the quality of life of the slum dwellers till they exist on the private lands. This project having partnership concept of slum dwellers is now in the process of implementation. Efforts are being made to give priority to the unserved/underserved areas under the Project. It is believed that through this project, a large number of slum dwellers will be in a position to avail of the essential services at the place they are situated and improve their quality of life. However, it is beyond the present means of the Corporation to provide rehabilitation to every slum dweller by providing alternate accommodation.

However, this is not to say that the Corporation has permitted Section 261(1) to remain on the statute book only. 9754 houses have been duly constructed by the Corporation under the Slum Clearance Scheme for accommodation slum dwellers and allotted to them and another 2220 houses have been constructed under the HUDCO Scheme for economically weaker sections and low income group people and allotted. Besides this, the Corporation has also provided land with necessary infrastructure to 315 hutment dwellers under the site and service scheme and has constructed another 2260 houses for the flood affected hutment dwellers under the Integrated Urban Development Programme.

So far 733 hutments which existed prior to May 1976 (cut off date) have been shifted from their earlier location in the interest of public and all of them have been given alternate site by the Municipal Corporation which includes 709 pavement dwelling families also. This protection is not available to those who have come up after 1-5-1976 (cut off date).

20. The Corporation has been further subsidising 80% cost of construction of individual latrines by slum dwellers and under this scheme over 35,000 individual toilets have been built up in the slums and chawls in past few years and this subsidy component has been further raised to 90% with effect from 1st April, 1996. As per the government's resolution dated May 30, 1987 State level and District/City level officers are nominated to monitor the working of the scheme.

21. In view of the above factual background the question that arises is: whether there is compliance with the directions issued by this Court referred to hereinbefore and whether any further modulation is needed in that behalf?

22. Empirical study of urban and rural population in India discloses that due to lack of civic facilities and means of livelihood people from rural areas constantly keep migrating to the urban areas resulting in mushroom growth of slums and encroachment of the pavements/ footpaths etc. Every municipal Corporation

has statutory obligation to provide free flow of traffic and pedestrians' right to pass and re-pass freely and safely; as its concomitance, the Corporation/Municipality have statutory duty to have the encroachments removed. It would, therefore, be inexpedient to give any direction not to remove, or to allot the encroachments on the pavements or footpaths which is a constant source of unhygienic ecology, traffic hazards and risk prone to lives of the pedestrians. It would, therefore, be necessary to permit the Corporation to exercise the statutory powers to prevent encroachment of the pavements/footpaths and to prevent construction thereon. As held earlier, the Corporation should always be vigilant and should not allow encroachments of the pavement and footpaths. As soon as they notice any encroachment they should forthwith take steps to have them removed and not allow them to settle down for a long time. It is stated in their affidavit that they are giving 21 days notice before taking action for ejection of the encroachers. That procedure, in our view, is a fair procedure and, therefore, the right to hearing before taking action for ejection is not necessary in the fact-situation. But the Commissioner should ensure that everyone is served with a notice and as far as possible by personal service and if it is not possible for reasons to be recorded in the file, through affixture of the notice on the hutment, duly attested by two independent panchas. This procedure would avoid the dispute that they were not given opportunity; further prolongation of the encroachment and hazard to the traffic and safety of the pedestrians.

23. In the additional affidavit of the appellant-Corporation, it raised and addressed four important questions of constitutional dimensions. The first question raised was to prevent the constant influx of the rural people to the urban areas and consequential growth of slums and encroachments; the second one relates to the need for preservation of the public property like road margin, street, place of public resorts like parks etc. to maintain ecological balance, sanitation and safety of pedestrians; the third question relates to lack of resources in the budgetary provisions to construct and allot houses for the poor and migrants of urban areas; and the fourth one relates to interference by the courts protecting the encroachers from ejection, the delay in disposal of the cases and resultant rights accruing to the encroachers. These questions bear vital dimensions which need careful examination and answers.

24. As regards the first question, it is axiomatic that India lives in villages. The traditional source of employment or avocation to the rural people generally is the agriculture. It is rather unfortunate that even after half a century from date of independence, no constructive planning has been implemented to ameliorate the conditions of the rural people by providing regular source of livelihood or infrastructure facilities like health, education, sanitation etc. It would be for the Union of India, all the State Governments and the Planning Commission, which are Constitutional functionaries, to evolve such policies and schemes as are necessary to provide continuous means of employment in the rural area so that in the lean period, after agricultural operations, the agricultural labour or the rural poor would fall back upon those services to eke out their livelihood. The middle class and upper middle class people in the rural areas, due to lack of educational and medical facilities, migrate to the nearby urban areas resulting in constant increase in urban population. Once infrastructure facilities are provided by proper planning and execution, necessarily the urge to migrate to the urban areas would no longer compel the rural people for their transplantation in the urban areas. It would, therefore, be for the executive to evolve the schemes and have them implemented in letter and spirit.

25. Article 19(1)(e) of the Constitution provides to all citizens fundamental rights to travel, settle down and reside in any part of the Bharat and none have right to prevent their settlement. Any attempt in that behalf would be unconstitutional. The Preamble of the Constitution assures integrity of the nation, fraternity among the people and dignity of the person to make India an integrated and united Bharat in a socialist secular democratic republic. The policy or principle should be such that everyone should have the opportunity to migrate and settle down in any part of Bharat where opportunity for employment or better living conditions are available and, therefore, it would be unconstitutional and impermissible to prevent the persons from migrating and settling at places where they find their livelihood and means of avocation. It is to remember that the Preamble is the arch of the Constitution which accords to every citizen of India socio-economic and political justice, liberties, equality of opportunity and of status, fraternity, dignity of person in an integrated Bharat. The fundamental rights and the directive principles and the preamble being trinity of the

Constitution, the right to residence and to settle in any part of the country is assured to every citizen. In a secular socialist democratic republic of Bharat hierarchical caste structure, antagonism towards diverse religious belief and faith and dialectical difference would be smoothed and the people would be integrated with dignity of person only when social and economic democracy is established under rule of law. The difference due to caste, sect or religion pose grave threat to affinity, equality and fraternity. Social democracy means a way of life with dignity of person as a normal social intercourse with liberty, equality and fraternity. The economic democracy implicit in itself that the inequalities in income and inequalities in opportunities and status should be minimised and as far as possible marginalised. The right to life enshrined under Article 21 has been interpreted by this Court to include meaningful right to life and not merely animal existence as elaborated in several judgments of this Court including Hawkers' case, Olga Tellies case and the latest Chameli Singh's case and host of other decisions which need no reiteration. Suffice it to state that right to life would include right to live with human dignity. As held earlier, right to residence is one of the minimal human rights as fundamental right. Due to want of facilities and opportunities, the right to residence and settlement is an illusion to the rural and urban poor. Articles 38 39 and 46 mandate the state, as its economic policy, to provide socio-economic justice to minimise inequalities in income and in opportunities and status. It positively charges the State to distribute its largess to the weaker sections of the society envisaged in Article 46 to make socio-economic justice a reality, meaningful and fruitful so as to make the life worth living with dignity of person and equality of status and to constantly improve excellence.

26. The Gram Panchayats, the Zilla Parishads and municipalities are local bodies. Parts IX and IXA of the Constitution have brought, through Articles 243 to 243ZG, the Panchayats, Zilla Parishads and municipalities as constitutional instrumentalities to elongate the socio-economic and political democracy under the rule of law. Article 243G and 243W enjoin preparation of plans for economic development and social justice. The State, i.e., the Union of India and the State Governments and the local bodies constitute an integral executive to implement the directive principles contained in Part IV through planned development under the rule of law. The appellant-Corporation, therefore, has Constitutional duty and authority to implement the directives contained in Articles 38 39 and 46 and all cognate provisions to make the fundamental rights available to all the citizens as meaningful. It would, therefore, be the duty of the appellant to enforce the schemes in a planned manner by annual budgets to provide right to residence to the poor.

27. As regards the question of budgeting, it is true that Courts cannot give direction to implement the scheme with a particular budget as it being the executive function of the local bodies and the State to evolve their annual budget. As an integral passing annual budget, they should also earmark implementation of socioeconomic justice to the poor. The State and consequentially the local authorities, are charged with the Constitutional duty to provide the weaker sections, in particular the Scheduled Castes and Scheduled Tribes with socio-economic and political injustice and to prevent their exploitation and to prevent them from injustice. The Union of India have evolved Indira Avas Yojna Scheme exclusively to provide housing accommodation to the Scheduled Castes and Scheduled Tribes and separate annual budgets are being allotted in that behalf by the Parliament and the appropriate Legislatures in allied matters. In that behalf, in implementation of the housing scheme evolved for them, the budgetary allocation should exclusively be spent for them and should not be diverted to any other projects or similar schemes meant for others. The Planning Commission has evolved the principle of allotment of a specified percentage for the overall developments of the Scheduled Castes and Scheduled Tribes. As a facet of it, the annual budget including for housing accommodation is being prepared and passed by the Parliament. Similarly for other schemes covered by the State budgets. Therefore, when the State, namely, Union of India or the appropriate State Government or the local bodies implement these schemes for housing accommodation of the Scheduled Castes and Scheduled Tribes or any other schemes, they should, in compliance with mandates of Articles 46 39 and 38, annually provide housing accommodation to them within the allocated budget and effectively and sincerely implement them using the allocations for the respective schemes so that the right to residence to them would become a reality and meaningful and the budget allocation should not either be diverted or used for any other scheme meant for other weaker sections of the society. Any acts in violation thereof or diversion of allocated funds, misuse or misutilisation, would be in negation of constitutional objectives

defeating and deflecting the goal envisioned in the Preamble of the Constitution. The executive forfeits the faith and trust reposed in it by Article 261 of the Constitution.

28. Similarly separate budget would also be allocated to other weaker sections of the society and the backward classes to further their socio-economic advancement. As a facet thereof, housing accommodation also would be evolved and from that respective budget allocation the amount needed for housing accommodation for them should also be earmarked separately and implemented as an on-going process of providing facilities and opportunities including housing accommodation to the rural or urban poor and other backward classes of people.

29. It is common knowledge that when Government allows largess to the poor, by pressures or surreptitious means or in the language of the appellant-Corporation "the slum lords" exert pressures on the vulnerable sections of the society to vacate their place of occupation and shift for settlement to other vacant lands belonging to the State or municipalities or private properties by encroachment. The Scheduled castes and Scheduled Tribes who are settled in the allotted Government properties/houses/plots of lands are compelled or driven by pressures to leave the places to settle at some other place. This would have deleterious effect on the integration and social cohesion and public resources are wasted and the constitutional objectives defeated. It would, therefore, be of necessity that the policy of the Government in executing the policies of providing housing accommodation either to the rural poor or the urban poor, should be such that the lands allotted or houses constructed/plots allotted be in such a manner that all the sections of the society, Schedules Castes, Scheduled Tribes, Backward Classes and other poor are integrated as cohesive social structure. The expenditure should be met from the respective budgetary provisions allotted to their housing schemes and in the respective proportion be utilised. All of them would, therefore, live in one locality in an integrated social group so that social harmony, integrity, fraternity and amity would be fostered, religious and caste distinction would no longer remain a barrier for harmonised social intercourse and integration. The facts in this case do disclose that out of 29 encroachers who have constructed the houses on pavements, 19 of them have left the places, obviously due to such pressures and interests of rest have come into existence by way of purchase. When such persons part with possession in any manner known to law, the alienation or transfer is opposed to the Constitutional objectives and public policy. Therefore, such transfer are void ab initio conferring no right, title or interest therein. In some of the States law has already been made in that behalf declaring such transfer as void with power to resume the property and allot the same to other needy people from these scheme. Other States should also follow the suit and if necessary the Parliament may make comprehensive law in this behalf. It would take care of the third question raised by the appellant. The Union Law Commission would examine this question.

30. Encroachment of public property undoubtedly obstructs and upsets planned development, ecology and sanitation. Public property needs to be preserved and protected. It is but the duty of the State and local bodies to ensure the same. This would answer the second question. As regards the fourth question, it is to reiterate that judicial review is the basic structure of the Constitution. Every citizen has a fundamental right to redress the perceived legal injury through judicial process. The encroachers are on exceptions to that Constitutional right to judicial redressal. The Constitutional Court, therefore, has a Constitutional duty as sentinel qui vive to enforce the right of a citizen when he approaches the Court for perceived legal injury, provided he establishes that he has a right to remedy. When an encroacher approaches the Court, the Court is required to examine whether the encroacher had any right and to what extent he would be given protection and relief. In that behalf, it is the salutary duty of the State or the local bodies or any instrumentality to assist the Court by placing necessary factual position and legal setting for adjudication and for granting/refusing relief appropriate to the situation. Therefore, the mere fact that the encroachers have approached the Court would be no ground to dismiss their cases. The contention of the appellant-Corporation that the intervention of the Court would aid impetus to the encroachers to abuse the judicial process is untenable. As held earlier, if the appellant-Corporation or any local body or the State acts with vigilance and prevents encroachment immediately, the need to follow the procedure enshrined as an inbuilt fair procedure would be obviated. But if they allow the encroachers to remain in settled possession sufficiently for long time, which would be a fact to be established in an appropriate case, necessarily suitable procedure would be required to be adopted

to meet the fact-situation and that, therefore, it would be for the respondent concerned and also for the petitioner to establish the respective claims and it is for the Court to consider as to what would be the appropriate procedure required to be adopted in the given facts and circumstances.

31. It is true that in all cases it may not be necessary, as a condition for ejection of the encroacher, that he should be provided with an alternative accommodation at the expense of the state which if given due credence, is likely to result in abuse of the judicial process. But no absolute principle of universal application would be laid in this behalf. Each case is required to be examined on the given set of facts and appropriate direction or remedy be evolved by the Court suitable to the facts of the case. Normally, the Court may not, as a rule, direct that the encroacher should be provided with an alternative accommodation before ejection when they encroached public properties, but, as stated earlier, each case requires examination and suitable direction appropriate to the facts requires modulation. Considered from this perspective, the apprehensions of the appellant is without force.

32. As regards the direction given by the High Court to provide accommodation as a condition to remove the encroachment, as held earlier, since the Municipal Corporation has a constitutional and statutory duty to provide means for settlement and residence by allotting the surplus land under the Urban Land ceiling act and if necessary by acquiring the land and providing house sites or tenements, as the case may be, according to the scheme formulated by the Corporation, the financial condition of the Corporation may also be kept in view but that would not be a constraint on the Corporation to avoid its duty of providing residence/plot to the urban weaker sections. It would, therefore, be the duty of the Corporation to evolve the schemes. In the light of the schemes now in operation, we are of the view that opportunity should be given to the 10 named petitioner-encroachers to opt for any one of the three schemes and the named two persons who are carrying on commercial activities should immediately stop the same. If they intend to have any commercial activity or hawking, it should be availed of as per the directions already issued by this Court in the aforesaid judgment and no further modification or any directions contra thereto need to be issued. Out of these 10 persons, if they are eligible within the terms of the schemes and would satisfy the income criterion, they would be given allotment of the sites or the tenements, as the case may be, according to their option. In case they do not opt for any of the schemes, 21 days' notice would be served on them and other encroachers and they may be ejected from the present encroachments. As regards other persons who have become encroachers by way of purchase either from the original encroachers or encroached pending writ petition/appeal in this Court, they are not entitled to the benefits given to the 10 encroachers. As regards those who are eligible according to the guidelines in the schemes and also fulfil the income criterion, it may be open to the Corporation to extend the same benefits in either of the three schemes, if they so desire. It is, however, made clear that we are not giving any specific direction in this behalf lest it would amount to encouraging the people to abuse the judicial process to avail of such remedy by encroaching public property.

33. Accordingly, the appeal is allowed. The order of the High Court is modified as indicated above. The writ petitions stand disposed of accordingly. In the circumstances of the case, however, there will be no order as to costs.

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4. *Shantistar Builders Vs. Narayan Khimalal Totame and Others (1990)*

MANU/SC/0115/1990

Equivalent Citation: AIR1990SC630, 1990 (16) ALR 173, 1990(92)BOMLR145, JT1990(1)SC106, 1990(1)SCALE86, (1990)1SCC520, 1990(1)UJ379

IN THE SUPREME COURT OF INDIA

Civil Appeal No. 2598 of 1989

Decided On: 31.01.1990

Appellants:**M/s. Shantistar Builders**

Vs.

Respondent:**Narayan Khimalal Totame and others**

Hon'ble Judges/Coram:

Ranganath Misra, P.B. Sawant and K. Ramaswamy, JJ.

Subject: Property

Catch Words

Mentioned IN

Acts/Rules/Orders:

Constitution of India - Article 21, Constitution of India - Article 46, Constitution of India - Article 226; Urban Land (Ceiling and Regulation) Act, 1976 - Section 2(9), Urban Land (Ceiling and Regulation) Act, 1976 - Section 10, Urban Land (Ceiling and Regulation) Act, 1976 - Section 19(1), Urban Land (Ceiling and Regulation) Act, 1976 - Section 20, Urban Land (Ceiling and Regulation) Act, 1976 - Section 21

Cases Referred:

Union of India v. Valluri Basavaiah Chaudhary, MANU/SC/0539/1979

Case Note:

Property - Construction - Section 20 of Urban Land (Ceiling & Regulation) Act, 1976 - Present appeal deals with the permission to builders to escalate rates in respect of construction permitted on exempted land under provisions of Act - Held, as a working guideline Court direct that a 'means test' for identifying 'weaker sections of society shall be adopted and for present income of family of applicant must not exceed Rs. 18,000/- to come within meaning of term to qualify for allotment - Applicant shall be called upon to satisfy the Committee about limit of income and present prescription of Rs. 18,000/- may be varied from time to time by State Government taking into consideration the fall of value of rupee, general improvement in the income of people now within annual income limit or Rs. 18,000/- and other relevant factors - It shall be open to the State Government to prescribe appropriate guideline in the matter of identifying the 'weaker sections of the society' - Committee shall have powers to scrutinise all relevant documents and give appropriate directions to builders and applicants keeping requirements of schemes and Code in view - Bombay High Court shall take steps to ensure that in respect of schemes in every agglomeration undertaken and which State Government may in future undertake, the services of an efficient judicial officer not below rank of an Additional District Judge on such terms as State Government and High Court consider appropriate shall be made available for discharging duties indicated and/or as may be provided - State Government shall suitably modify its Code in the light of this judgment and recirculate same to all concerned within four weeks from today - Liberty is given to members of weaker sections residing in other States, builders and respective State Governments to ask for extension of Code with such modifications as may be necessary for other parts of country

ORDER

Ranganath Misra, J.

1. Respondents filed a writ petition under Article 226 of the Constitution in the Bombay High Court challenging permission to the builders to escalate the rates in respect of construction permitted on exempted land under the provisions of the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter 'Act' for short). The respondents made an application (Civil application No. 5748/89) for amendment of the averments in that writ petition but by order dated 12th of December, 1988, the High Court rejected the civil application and refused leave to amend. By a subsequent order dated 16th of December, 1988, in the writ petition, the High Court held:

The Writ Petition as filed does not survive. It has become infructuous by changed government policy and the resolutions and letters already referred to in our order under the Civil Application. Hence, the same is dismissed.

We propose to give some directions regarding future monitoring of the scheme. These directions are restricted to this particular project only and although detailed monitoring is desirable with regard to all schemes sanctioned under Section 20, this should be considered by the Government and no directions by the Court can be given generally without considering the difficulties of the Government. However, this one scheme is capable of proper monitoring and we propose to give certain additional directions to the competent authority for monitoring the same....

The direction of the High Court in regard to monitoring has been challenged by the builder in this appeal by special leave.

2. At the initial stage of hearing of this appeal we had been told that the State of Maharashtra was considering the formulation of certain guidelines in respect of constructions over exempted lands covered under Section 20 of the Act and at the close of the hearing the formulation of the State Government has been placed for our consideration.

3. A Constitution Bench of this Court in *Union of India v. Valluri Basavaca Choudhary* MANU/SC/0539/1979 : [1979]3SCR802, while dealing with a dispute relating to the vires of the Act stated: The primary object and purpose of the Urban Land (Ceiling and Regulation) Act, 1979, as the long title and the preamble show, is to provide for the imposition of a ceiling on vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit, to regulate the construction of buildings in such land and for matters connected therewith, with a view to preventing the concentration of urban land in the hands of a few persons and speculation and profiteering therein, and with a view to bringing about an equitable distribution of land in urban agglomerations to subserve the common good, in furtherance of the Directive Principles of Article 89(b) and (c).

4. Under the scheme of the Act, urban agglomerations have been divided into four classes and a ceiling has been prescribed for each classification. The vacant land in excess of the ceiling under the provisions of Section 10 of the Act vests in the State by way of acquisition and the vacant sites thus acquired by the State are intended to be utilised for purposes of housing and Sections 23 and 24 of the Act provide for disposal of vacant land. The Act, therefore, purports to take away the excess land from the holders thereof and utilise the same for purposes of housing and other public purposes. Chapter IV of the Act provides for regulation of transfer as also use of urban property. Section 20 empowers the State to exempt lands from the purview of the Act by providing:

20. Power to exempt.

(1). Notwithstanding anything contained in any of the foregoing provisions of this chapter, -

(a) Where any person holds land in excess of the ceiling limit and the State Government is satisfied, either on its own motion or otherwise, that, having regard to the location of such land, the purpose for which such land is being used or is proposed to be used and such other relevant factors as the circumstances of the case may require, it is necessary or expedient in the public interest so to do, that Government may, by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this chapter....

And Section 21 provides:

21 Excess vacant land not to be treated as excess in certain cases.

(1) Notwithstanding anything contained in any of the foregoing provisions of this chapter, where a person holds any vacant land in excess of the ceiling limit and such person declares within such time, in such form and in such manner as may be prescribed before the Competent Authority that such land is to be utilised for the construction of dwelling units (each such dwelling unit having a plinth area not exceeding eighty square metres) for the accommodation of the weaker sections of the society, in accordance with any scheme approved by such authority as the State Government may, by notification in the Official Gazette, specify in this behalf, then, the Competent Authority may, after making such inquiry as it deems fit, declare such land, not to be excess land for the purposes for this chapter and permit such person to continue to hold such land for the aforesaid purpose, subject to such terms and conditions as may be prescribed, including a condition as to the time-limit within which such buildings are to be constructed.

5. Both Sub-sections 20 and 21 contain provisions that if Government or the competent authority, as the case may be, is satisfied that any of the conditions subject to which exemption was granted is not complied with, it shall be competent for it to withdraw the order under Section 20 or declare such land to be excess land under Section 21 and bring it within the mischief of the statute.

6. In the instant case on January 11, 1978, on the basis of an application made on 24th October, 1987, the State Government made an order of exemption, the salient portions of which are extracted for convenience:

GOVERNMENT OF MAHARASHTRA

NO. HWE-1077/XXXV

GENERAL ADMINISTRATION DEPARTMENT, MANTRALAYA,

BOMBAY-400032.

11TH JANUARY, 1978.

WHEREAS (1) Shri Kumarpal Vadilal Shah (2) Shri Navinchandra Vadilal Shah (3) Smt. Champaoen w/o Vadilal Shah (4) Shri Vasantlal Vadilal Shah (5) Shri Babulal Vadilal Shah (6) Smt. Pushpa Maugaldas Shah (7) Smt. Nirmala Hiralal Shah (8) Smt. Shakuntala Tansukhlal Parekh and (9) Smt. Madhuabala Vadilal Shah (persons at Sr. Nos.2 to 9 by their Constituted Attorney Shri Kumarpal Vadilal Shah), 26, Suneel Shopping center, Opp. Navrang Talkies, Andheri (West), Bombay - 400 058, hold vacant lands in excess of the Ceiling Limit in the Greater Bombay Urban Agglomeration, details of which are given in the Schedule 'A' herein:

AND WHEREAS the said persons have applied for exemption under Section 20 of the Urban Land (C.& Sub-section) Act, 1976 (33 of 1976).

AND WHEREAS, the said persons have mentioned in their application, that their Scheme of construction of houses for Weaker Section will be executed by them, through Messers STAR BUILDERS, 302, Sharda Chambers, 15 New Marine Lines, Bombay - 20.

NOW THEREFORE, in exercise of the powers conferred by Sub-section (1) of Section 20 of the said Act, after having recorded in writing the reasons for making this Order, the Government of Maharashtra hereby exempts the said vacant lands, from the provisions of Chapter III of the said Act, subject to the following conditions viz.:

1. The lands exempted under this exemption order shall be used by the said persons for the purpose of housing for weaker section comprising 17, 000 (seventeen thousand) tenements consisting of 3,000 (three thousand) tenements of plinth area, not exceeding 20.00 sq. metrs., 10,000 (ten thousand) tenements of plinth area, not exceeding 30.00 sq. metrs., 3,000 (three thousand) tenements of plinth area, not exceeding 44.00 sq. mtrs. and 1,000 (one thousand) tenements of plinth area, not exceeding 57.00 sq. mtrs. Any change made in the user of the land shall amount to a breach of this condition.

2. The said persons shall make full utilization of the land so exempted for the purpose aforesaid, by constructing on the land the 17,000 tenements as specified in the condition No. 2 above. The said persons shall commence construction of the tenements within a period of one year from the date of this exemption order and shall complete the construction work within a period of five years from that date, failing which the exemption shall stand withdrawn. If only a part of land is utilized and a part remains vacant at the end of period of five years, exemption shall be deemed to have been withdrawn.

3. The final selling price, all inclusive of each of the dwelling units shall not exceed Rs. 50/- (Rs. fifty only) per sq. of plinth area. Each tenement is to be provided with all the amenities as mentioned in the Schedule 'B' attached to this Order and as mentioned in the State Government Scheme, announced on 2nd October, 1977 for construction of houses for Weaker Sections of Society on surplus vacant land by the land holder. The details of construction shall not be inferior to those already mentioned in the application. The acutely construction and the quality of construction shall not be inferior to those already mentioned in the application. The actual construction and the quality of construction, will be subject to the building regulations of the local authorities, and subject to such other conditions as may be imposed, by the Collector of Thane, Town Planning Authority and the B.M.R.D.A and other Statutory Regulation.

4. The said persons shall not transfer the exempted lands (with or without buildings thereon) or any part thereof to any other persons, except for the purpose of mortgage in favour of any financial institution, specified in Sub-section (1) of Section 19 of the said Act, for raising finances for the purposes of construction or any one of the tenements mentioned above. Breach of this condition shall mean that the exemption granted under this Order stands withdrawn.

5. The construction work under the scheme, will be further subject to all other conditions incorporated in the Scheme of Weaker Section Housing announced by the State, Government on 2nd October, 1977 and subject to such other conditions as may be imposed by the local authorities, Collector of Thane, Town Planning Authorities and the B.M.R.D.A.

6. If at any time, the State Government is satisfied that there is a breach of any of the condition mentioned in this Order, it shall be competent for the State Government by order to withdraw the exemption from the date specified in the Order:

7. Respondents contended before the High Court that the builder had violated the conditions imposed in the order of exemption; that need of the Weaker Sections of the society was not being attended to and a big racket had been formed by real estate speculators to eliminate the economically weaker sections and persons genuinely in need of housing accommodation and to make unauthorised and illegal profit out of such transactions. They had also challenged the sanction of escalation following the demand of the builder and alleged that the legislative purpose of according exemption and even as contemplated in the original order of exemption have been departed from in allowing escalation beyond reasonable limits. It had been further alleged that applications from genuine persons belonging to the economically weaker sections have been overlooked and persons not entitled to the benefit have been registered by the builders and even allotted apartments and the builders are in collusion with racketeers.

8. We have already indicated that the High Court did not examine the factual aspects involved in the dispute when it dismissed the writ petition but proceeded to lay down the guidelines. The respondents have alleged that their claims for allotment of premises have been overlooked though they came earlier in point of time. There is also a serious dispute raised by them before us that the escalation permitted by the State Government to the builder is excessive and not warranted.

9. Basic needs of man have traditionally been accepted to be three-food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body; for a human being it has to be a suitable accommodation which would allow him to grow in every aspect - physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well- built comfortable house but a reasonable home particularly for people in India can even be mud-built thatched house or a mud- built fire-proof accommodation.

10. With the increase of population and the shift of the rural masses to urban areas over the decades the ratio of poor people without houses in the urban areas has rapidly increased. This is a feature which has become more perceptible after independence. Apart from the fact that people in search of work move to urban agglomerations, availability of amenities and living conveniences also attract people to move from rural areas to cities. Industrialisation is equally responsible for concentration of population around industries. These are feature which are mainly responsible for increase in the homeless urban population, Millions of people today live on the pavements of different cities of India and a greater number live animal like existence in jhuggis.

11. The Planning Commission took note of this situation and was struck by the fact that there was no corresponding rise in accommodation with the growth of population and the shift of the rural people to the cities. The growing realisation of this disparity led to the passing of the Act and acquisition of vacant sites for purposes of housing. Considerable attention has been given in recent years to increasing accommodation though whatever has been done is not at all adequate. The quick growth of urban population overshadows all attempts of increasing accommodation. Sections 20 and 21 of the Act vest power in the State Governments to exempt vacant sites from vesting under the Act for purposes of being taken over if housing schemes are undertaken by owners of vacant urban lands. Section 21 specifically emphasises upon weaker sections of the people. That term finds place in Article 46 of the Constitution and Section 21 uses the same language. 'Weaker sections' have, however, not been defined either in the Constitution or in the Act itself. An attempt was made in the Constitution Assembly to provide a definition but was given up. Attempts have thereafter been made from time to time to provide such definition but on account of controversies which arise once the exercise is undertaken, there has been no success. A suggestion for introducing economic criterion for

explaining the term was made in the approach to the Seventh Five Year Plan (1985-1990) brought out by the Planning Commission and approved by the National Development Council and the Union Government. A lot of controversy was raised in Parliament and the attempt, was dropped. In the absence of a definition perhaps a proper guideline could be indicated but no serious attention has been devoted to this aspect

12. Members of the Scheduled Castes and Scheduled Tribes have ordinarily been accepted as belonging to the weaker section. Attempt to bring in the test of economic means has often been tried but no guideline has been evolved. Undoubtedly, apart from the members of the Scheduled Castes and Scheduled Tribes, there would be millions of other citizens who would also belong to the weaker sections. The Constitution maker intended all citizens of Indian belonging to the weaker sections to be benefited when Article 46 was incorporated in the Constitution. Parliament in adopting the same language in Section 21 of the Act also intended people of all weaker sections to have the advantage. It is, therefore, appropriate that the Central Government should come forward with an appropriate guideline to indicate who would be included within weaker sections of the society.

13. In recent years on account of erosion of the value of the rupee, rampant prevalence of black money and dearth of urban land, the value of such land has gone up sky-high. It has become impossible for any member of the weaker sections to have residential accommodation anywhere and much less in urban areas. Since a reasonable residence is an indispensable necessity for fulfilling the Constitutional goal in the matter of development of man and should be taken as included in 'life' in Article 21, greater social control is called for and exemptions granted under Sections 20 and 21 should have to be appropriately monitored to have the fullest benefit of the beneficial legislation. We, therefore, command to the Central Government to prescribe appropriate guidelines laying down the true scope of the term 'weaker sections of the society' so that everyone charged with administering the statute would find it convenient to implement the same.

14. Respondents who claim to belong to weaker sections of the society maintain that they are entitled to allotment of 862 plus 558 flats. It is true that initially the claim was for a smaller number but the number has gone up when further petitions were filed before the High Court. There is, perhaps, some basis in the objection of the builders as also the stand taken by the State Government before us that the respondents' claim should undergo in depth scrutiny. We direct that the genuineness of the claim should be scrutinised in accordance with the guidelines which shall now be indicated but in the event of the claims being found tenable, the builders shall have a direction to provide accommodation in terms of the scheme for those who are found to be acceptable. To ensure implementation of this direction the builders are called upon not to make any commitment or allotments for flats until the claims of the 1420 applicants are scrutinised and allotment of accommodation for such number of persons as are found entitled is provided.

15. We shall now proceed to deal with the guidelines. The Government of Maharashtra by the Resolution No. ULC-1090/3'422(D- XIII) in the Housing and Special Assistance Department have laid down the guidelines. We shall refer to the preamble and some of the provisions thereof. The preamble indicates: Close and effective monitoring of the implementation of weaker sections housing schemes sanctioned under Sections 20 and 21 of the Urban Land (Ceiling & Regulation) Act, 1976, is one of the most important duties of the competent authorities who have been entrusted with the task of implementing the Urban Land Ceiling Act, 1976, in the nine urban agglomerations in Maharashtra, viz. Bombay, Pune, Thane, Ulhasnagar, Kolhapur, Solapur, Sangli, Nasik and Nagpur. Competent authorities are required to ensure that construction of flats for the weaker sections of the society on land exempted under Sections 20 and 21 is completed within the time-frame stipulated in the exemption order. They are also required to ensure that the terms and conditions of the exemption order such as issue of advertisements, giving particulars of the schemes, sale of flats at the prices approved by government, sizes of flats, non-eligibility of persons who already own a dwelling unit in the same urban agglomeration to purchase a flat from such schemes, handing over of land affected by development plan, reservations to the planning authority etc. are all complied with. Physical implementation of Weaker sections housing schemes in Maharashtra is one of the important issues on the agenda at the meetings of competent authorities convened by the Housing Department periodically. General and special instructions regarding effective monitoring of implementation of the housing schemes are given to competent authorities in such meetings. Government of Maharashtra have carefully considered the importance attaching to close and effective monitoring of the implementation of weaker sections housing schemes and is now pleased to direct by way of codification of earlier instructions on the subject that competent authorities should ensure that the following instructions are scrupulously complied with....

16. After this preamble, 16 paragraphs in what has been named as the Code - and a copy of this Code is appended to the judgment as annexure for convenience - indicate the guidelines.

17. We are of the view that allotment shall be on the basis of 'one family - one flat' and the family shall include husband, wife and dependent children. A family which has one flat in any urban agglomeration within the State shall not be entitled to allotment or acquisition by transfer of a flat under this Code.

18. Government nominees contemplated under the Code must belong to weaker sections of the society and shall also be subjected to the rule of one family - one flat. The number of Government nominees should not exceed 5% of the total accommodation available in any scheme.

19. Every builder shall maintain a register of applicants chronologically registering them on the basis of the date of receipt of the applications. The register should be up-to-date and available for inspection by the authorities. As and when an application is received by the builder an appropriate receipt acknowledging acceptance of such application shall be issued to the applicant and in such receipt, the number in the Application Register shall be clearly indicated. Simultaneously, a copy of the application with its number shall be sent by the builder to the Committee for its record.

20. As a working guideline we direct that a 'means test' for identifying 'weaker sections of the society shall be adopted and for the present income of the family of the applicant must not exceed Rs. 18,000/- (eighteen thousand) to come within the meaning of the term to qualify for allotment. The applicant shall be called upon to satisfy the Committee about the limit of income and the present prescription of Rs. 18,000/- may be varied from time to time by the State Government taking into consideration the fall of the value of the rupee, general improvement in the income of the people now within the annual income limit or Rs. 18,000/- and other relevant factors. It shall be open to the State Government to prescribe appropriate guideline in the matter of identifying the 'weaker sections of the society'.

21. 'Competent authority' has been defined in Section 2(9) of the Act. From the Code it appears that he is an officer subordinate to the Collector of the District so far as the State of Maharashtra is concerned as an appeal is contemplated from his orders to the Collector. The duties and responsibilities and powers vested in the competent authority under the Code are wide and considerable. We are of the opinion (without in any way casting any aspersion) that it would be difficult for the competent authority to exercise efficiently and to the satisfaction of everyone the duties cast upon him under the Code. In the matter of implementation of the scheme and with a view to providing satisfactory execution thereof and fulfilling the laudable purpose stipulated under the Act and undertaken by the scheme, it is necessary that there should be a committee in respect of the schemes in every urban agglomeration for weaker sections sanctioned under Sections 20 and 21 of the Act for overseeing the implementation of every scheme, particularly in the matter of due compliance of the conditions under which exemption is granted, timely construction of the flats, appropriate advertisement as contemplated, registration of the applications in response to advertisements in a systematic manner, appropriate allotment of flats including priorities on the basis of registration, ensuring legitimate charges only being demanded and monitoring strict compliance to avoid underhand dealing or any unjust treatment. It should be handled by the competent authority in a committee consisting of himself, a judicial officer not below the rank of an Additional District Judge and a Government engineer not below the rank of Superintending Engineer. In the committee, the judicial officer shall function as the Chairman.

22. This Committee shall have powers to scrutinise all relevant documents and give appropriate directions to the builders and applicants keeping the requirements of the schemes and the Code in view. To the extent we have indicated the powers conferred on the competent authority in terms of the State Code shall stand vested in the committee. The Bombay High Court shall take steps to ensure that in respect of schemes in every agglomeration undertaken and which the State Government may in future undertake, the services of an efficient judicial officer not below the rank of an Additional District Judge on such terms as the State Government and the High Court consider appropriate shall be made available for discharging the duties indicated and/or as may be provided. We would like to impress upon every Committee that fulfilment of the laudable purpose of the providing a home to the poor homeless depends upon its commitment to the goal and every effort should be made by it to ensure that the builder does not succeed in frustrating the purpose. The State Government shall suitably modify its Code in the light of this judgment and recirculate the same to all concerned within four weeks from today.

23. At present we have confined the directions to the State of Maharashtra. Liberty is given to members of the weaker sections residing in other States, builders and the respective State Governments to ask for extension of the Code with such modifications as may be necessary for other parts of the country.

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5. *People's Union for Civil Liberties vs. Union of India (UOI) and Ors. (2012)*

MANU/SC/0108/2012

Equivalent Citation: 2012(1)SCALE735

IN THE SUPREME COURT OF INDIA

I.A. Nos. 94 and 96 in W.P. (C) No. 196 of 2001 and I.A. No. 82/2008 in W.P. (C) No. 196 of 2001

Decided On: 23.01.2012

Appellants: **People's Union for Civil Liberties**

Vs.

Respondent: **Union of India (UOI) and Ors.**

Hon'ble Judges/Coram:

Dalveer Bhandari and Dipak Misra, JJ.

Subject: Constitution

Catch Words

Mentioned IN

Acts/Rules/Orders:

Constitution of India - Article 21

Cases Referred:

Francis Coralie Mullin v. Union Territory of Delhi MANU/SC/0517/1981 : (1981) 1 SCC 608; Chameli Singh v. State of U.P. MANU/SC/0286/1996 : (1996) 2 SCC 549; C.E.S.C. Ltd. v. Subhash Chandra Bose MANU/SC/0466/1992 : (1992) 1 SCC 441; Parmanand Katara v. Union of India MANU/SC/0423/1989 : (1989) 4 SCC 286

JUDGMENT

1. Article 21 of the Constitution states that no person should be deprived of his life or personal liberty except according to the procedure established by the law. Over the years, this Court's jurisprudence has added significant meaning and depth to the right to life. A large number of judgments interpreting Article 21 of the Constitution have laid down right to shelter is included in right to life.

2. In Francis Coralie Mullin v. Union Territory of Delhi MANU/SC/0517/1981 : (1981) 1 SCC 608, Bhagwati J stated that:

the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and commingling with fellow human beings. of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self (at para. 8).

3. In Chameli Singh v. State of U.P. MANU/SC/0286/1996 : (1996) 2 SCC 549, this Court interpreted Article 21 in the following words:

Right to live guaranteed in any Civilised society implies the right to food, water, decent environment education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, therefore, is not a mere protection of his life and limb.

4. In C.E.S.C. Ltd. v. Subhash Chandra Bose MANU/SC/0466/1992 : (1992) 1 SCC 441 this Court held that right to social and economic justice is a fundamental right. Right to health of a worker is a fundamental right. Therefore, right to life enshrined in Article 21 means something more than mere survival of animal existence. The right to live with human dignity with minimum sustenance and shelter and all those rights and aspects of life which would go to make a man's life complete and worth living, would form part of the right to life. Enjoyment of life and its attainment -- social, cultural and intellectual -- without which life cannot be meaningful, would embrace the protection and preservation of life guaranteed by Article 21.

5. The State owes to the homeless people to ensure at least minimum shelter as part of the State obligation under Article 21.

6. In Parmanand Katara v. Union of India MANU/SC/0423/1989 : (1989) 4 SCC 286, this Court observed that Article 21 casts the obligation on the State to preserve life which is the paramount duty of the State

according to the Constitution.

7. We have heard the Learned Counsel for the parties. We would like to deal with the affidavits of the following States:

Andhra Pradesh:

8. Mr. Gonsalves, learned senior counsel appearing on behalf of the Petitioner has brought to our notice that 15 deaths have taken place in the State of Andhra Pradesh during this winter due to severe cold. He states that according to the norms, 95 night shelters are required in the State of Andhra Pradesh whereas there are only 5 permanent night shelters.

9. Learned Counsel appearing for the State of Andhra Pradesh submits that other night shelters are under construction and the State has undertaken the process to identify some already constructed buildings to be converted into night shelters. We direct the State to identify these buildings within four weeks from today. We direct the Chief Secretary to file an affidavit indicating the buildings which have been identified by the State for converting into night shelters, within four weeks with an advance copy thereof to the Learned Counsel for the Petitioner.

Bihar:

10. Mr. Gonsalves, learned senior counsel appearing on behalf of the Petitioner submits that a number of deaths have been reported in this winter in the State of Bihar also. According to the norms, 48 night shelters are required in the State of Bihar whereas the State has constructed only 36 night shelters. If the night shelter homes are not covered, they may be adequately covered.

11. Mr. Gonsalves submits that a joint inspection of the night shelters would be carried out and a report would be submitted before this Court. Let the joint inspection of the night shelters be carried out within two weeks from today and a report be filed before this Court within two weeks thereafter. Let an affidavit be filed by the Chief Secretary within four weeks from today.

Gujarat:

12. According to the norms, 112 night shelters are required in the State of Gujarat whereas only 25 night shelters are operational in the State and 88 night shelters are under construction. Let the construction of the night shelters be completed on or before 31st March, 2012.

13. Let a joint inspection of the night shelters be carried out within two weeks from today and a report be submitted before this Court within two weeks thereafter.

Jharkhand:

14. According to the norms, 31 night shelters are required in the State of Jharkhand whereas only 10 night shelters are functional in the State. We direct that the remaining night shelters be constructed on or before 31st March, 2012.

15. Let a joint inspection of the night shelters be carried out within two weeks from today and a report be submitted before this Court within two weeks thereafter.

Madhya Pradesh:

16. According to the norms, 100 night shelters are required in the State of Madhya Pradesh. Learned Counsel for the State submits that 32 permanent night shelters are in existence and 68 night shelters are under construction. Let the construction of the remaining night shelters be completed on or before 31st March, 2012. He has placed on record some photographs which show that the night shelters have all basic facilities. It is further stated that food is also being supplied at a very concessional rate of ` 5/- per meal.

17. Let a joint inspection of the night shelters be carried out within two weeks from today and a report be submitted before this Court within two weeks thereafter.

Maharashtra:

18. According to the norms, 284 night shelters are required in the State of Maharashtra whereas there are only 12 permanent and 12 temporary night shelters functional in the State. We direct that the remaining night shelters be constructed on or before 31st March, 2012. We also direct the State to properly comprehend the urgency of compliance with the directions of this Court.

19. Learned Counsel appearing for the State submits that he, along with the Learned Counsel for the Petitioner, would meet Hon'ble the Chief Minister and would explain the problem of the homeless people and take necessary instructions in the matter.

20. Let a joint inspection of the night shelters be carried out within two weeks from today and a report be submitted before this Court within two weeks thereafter.

West Bengal:

21. According to the norms, 143 night shelters are required in the State of West Bengal whereas there are only 6 permanent night shelters. Learned Counsel for the State submits that 8 more night shelters would be operational by 31st March, 2012.

22. This Court has been monitoring this matter for over two years now and there has not been compliance of the directions of this Court by the State of West Bengal. We direct the standing counsel for the State and Learned Counsel for the Petitioner to have a joint meeting with the Chief Minister of the State and impress upon the urgent need of complying with the directions of this Court.

23. Let a joint inspection of the night shelters be carried out within two weeks from today and a report be submitted before this Court within two weeks thereafter.

Uttar Pradesh:

24. According to the norms, 139 night shelters are required in the State of Uttar Pradesh. Learned Counsel for the State submits that 18 permanent night shelters and 76 temporary night shelters are operational in the State and 67 permanent night shelters are under construction.

25. Let a joint inspection of the night shelters be carried out within two weeks from today and a report be submitted before this Court within two weeks thereafter.

Tamil Nadu:

26. The Chief Secretary of the State of Tamil Nadu has filed an affidavit in Court today which is taken on record. A copy of the same has been given to the Learned Counsel for the Petitioner who may file a reply to this affidavit within four weeks from today.

Haryana:

27. According to the Learned Counsel appearing for the State of Haryana, all the night shelters in the State of Haryana have been made operational and facilities of drinking water, bathing, medical facility and separate toilets for gents and ladies have been provided in those shelters.

28. Let a joint inspection of the night shelters be carried out within two weeks from today and a report be submitted before this Court within two weeks thereafter.

29. Nothing is more important for the State than to preserve and protect the lives of the most vulnerable, weak, poor and helpless people. The homeless people are constantly exposed to the risk of life while living on the pavements and the streets and the threat to life is particularly imminent in the severe and biting cold winter, especially in the northern India.

30. The State must discharge its core obligation to comply with Article 21 of the Constitution by providing night shelters for the vulnerable and homeless people. Consequently, we direct the Collectors and District Magistrates of the States of Jammu & Kashmir, Himachal Pradesh, Uttarakhand, Punjab and Haryana, Rajasthan, Uttar Pradesh and Bihar to file affidavits with their respective Chief Secretaries within three weeks from today in which they must ensure that at least temporary night shelters are provided to protect and preserve the lives of the people in consonance with the constitutional philosophy enshrined in Article 21 of the Constitution.

31. List this matter for further directions on 27th February, 2012.

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