

ANALYSIS OF OLGA TELLIS & OTHERS V. BOMBAY MUNICIPAL CORPORATION & OTHERS

Gyan Prakash Kesharwani

B.A.LL.B., 4th Semester

Department of Law

Indore Institute of Law, Indore, India

Citation

1986 AIR180

Decided On:

10-07-1985

Judges/Coram

*Y.V. Chandrachud (CJ), Syed Murtaza Fazalali, V.D. Tulzapurkar,
O. Chinnappa Reddy (J), A. Vardarajan (J)*

I. INTRODUCTION

This petition portrayed the plight of lakhs of people who live in the pavements and slums and constitutes around half of the population of the country. These people live in the midst of filth and squalor between the dogs that can cause rabies and the roadside animals that can harm them anytime. A place where women are seen fighting and also picking lice from each other hairs, a place where boys beg and the man are without occupation. These people who portrayed half of the population are the one's who earn for their daily needs and doesn't have the confirmation of food for two times a day. These humans who live in the inhuman conditions were forced out of their small places to live i.e. the slums and the pavements and hence they came to knock the door of Supreme Court. These humans living inhuman life came to the court to pray for their inhuman life and asked the Supreme Court to enforce their fundamental right to life under article 21 which guarantees that no person can be deprived of his right to life except according the procedure established by law. These people contended that the right to life can't be exercised without the presence of livelihood and they are unable to get the job in their villages and hence they came to the big city and live in slum/pavements since it is near to their place of occupation and they can't afford to pay the transportation charge. They also relied on the Article 19 (1)(e), which guarantees the right to reside and settle on any part of the country and challenged the constitutionality of Section 312, 313 and 314 of Bombay Municipal corporation act, 1988.

II. FACTS & BACKGROUND

On 13th July 1981, Mr. A.R. Antulay, the then Chief Minister of Maharashtra made an announcement to evict all the pavement dwellers residing in the city of Bombay. He also said that they will either be deported to their respective origin places or will be removed from the city of Bombay. He relied on the reason that "these are a very inhuman existence". He gave this task to the Municipal Corporation and directed the commissioner to provide aid.

After this, the two sets of writs were filed in the Supreme Court, the first one was filed by a journalist, and two pavement dwellers while the other set of writ petitions represented the hutments from three different areas. The pavements of the petitioners belonging to the first set were already demolished while the petitioners of the second set of petitioners knocked the door of High Court soon after hearing the announcement of the Chief Minister and got the ad-interim injunction on 21st July 1981 but still the petitioners were deported out of bombay on 23rd July 1981 and hence, both the set of petitions were heard jointly.

Through the present appeal, the petitioners challenged the decision of the Chief Minister and the act of the Municipal corporation residing on Article 14, 19 & 21 of the constitution of India.

III. ISSUES:

1. Whether Right to livelihood comes under the ambit of Right to Life.
2. Does any person hold the right to encroach upon public reserved areas.
3. Whether Section 312, 313 & 314 of Bombay Municipal corporation Act, 1988 violates the provisions of Article 14, 19 and 21 of the Constitution of India.

IV. JUDGMENT

The Hon'ble court having the Coram of 5 judges held that:

1. No person has right to encroach on footpaths, pavements and other public reserved areas.
2. The Right to livelihood is an integral part of the Right to Life under Article 21 of the constitution.
3. The provisions of Sec. 312, 313 and 314 of Bombay Municipal corporation Act, 1988 is not unreasonable and unconstitutional.
4. Pavement Dwellers who were censused in 1976 should be provided with alternative pitcher, not far away from the place of their work.
5. The slums must not be removed until 31st October 1985 and if one, the parties may apply to the court.

V. ANALYSIS

The judgment affected lakhs of people and to say around 50% population of Bombay who somehow managed to earn their bites by leaving their homes and settling down in an unknown city. The people who are neither literate nor have the money to send their childrens to the school and the matter here was not only of their place of stay but of their livelihood which further affects their Life and the will to live.

Many Contentions were made from both the parties and many new principles evolved while some old principles were again established.

Right to encroach upon public reserved areas:

The instant a case was the matter where the petitioners were fighting to not remove their encroachment of the public reserved areas. It was neither contended by the petitioners that they have any fundamental right to encroach upon any public reserved areas. The respondents also contended that "*No person have any legal right to encroach upon on a footpath, public street, or any other place over which the public has the right*" The petitioners were contending that the removal of encroachments will deprive them of their rights under article 19 and 21 and hence it was well established that ***No person have the legal right to encroach upon any public reserved areas.***

However, the principle was quite clear from a long time and the petitioner even did not contended to have any such legal right but the judgment again established the same.

Law of Estoppel

While analyzing that whether the fundamental rights of the petitioners are violated the respondents claimed that the petitioners have earlier contended in the high court that they do not claim any fundamental right to put up huts and encroachments in the public areas, they are estopped from setting up their fundamental rights in the present petition.

The Hon'ble court clearly stated that "*there can be no estoppels against the constitution*" The court stated that the constitution is the law of the land and all the other laws are made in the ambit of it.

Through this principle, the supreme court rescued the constitution and established that the constitution is the supreme law and the fundamental rights resides with the person even if he do not want.

Right to Livelihood:

The petitioners contended that the removal of the dwellings violates their right to livelihood which must be read under Article 21 of Indian Constitution i.e. Right to Life and hence they must not be removed until the alternative place is allotted to them. Article 21 of the constitution of India guarantees that no person shall be deprived of his life except the due procedure established by law.

The petitioner did not contend that they have any right to live on the pavements but instead said that they have the right to life which can't be exercised without the presence of Right to Livelihood and in case they are evicted they will be deprived of their place to live and employment also, which will further violates their right to life.

The Hon'ble court clearly said that the Right to Livelihood is an integral part of the right conferred in Article 21 of Constitution as the right doesn't include just the deprivation of life by imposition of execution of death sentence only but also the deprivation from Right to Livelihood.

No person can live their life without the means of living i.e. the means of livelihood and if the live to livelihood is not considered as the fundamental right, it will become the easiest way to deprive people from his right to life by taking away their means of livelihood. And hence *the Right to Livelihood was said to be incorporated under article 21 of the Constitution of India and any person deprived of his right to livelihood can claim its right if it is not done according to the due procedure established by law.*

The inclusion of Right to Livelihood was one of the major part of the judgment and rightly carried out that a person can't live without livelihood.

Constitutionality of Section 312, 313 & 314 of the Bombay Municipal Corporation Act

The petitioner challenged the constitutionality of Article 312, 313 & 314 of the Bombay Municipal Corporation Act as being against the fundamental right enshrined in Article 14, 19 and 21 of the constitution. Section 314 empowered the Municipal commissioner to remove any object or structure or fixture which is set up in or upon any street without any prior Notice. The petitioner contended that the provision of demolishing without any notice is not just fair and reasonable law. The petitioners also contended that the provisions give arbitrary power to an individual and also unreasonably discriminates between the pavement dwellers and the pedestrian. The third contention that the petitioners gave was that the government has failed in its obligation to make the socialist society and they do not have any right to remove the pavements and slums.

The Hon'ble court stated that "*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.*"

But at the same time the Court provided that Section 312, 313 and 314 are not unreasonable, unjust and unfair. However, there is no static definition of unreasonableness but the footpaths are made for the public purpose and any use of footpaths for private purpose frustrates the very object they are made for and No one has the right to encroach upon public places without authorization. Regarding the contention of Notice, Hon'ble court said that the Section 314 is an enabling provision and not the compulsory provision.

The decision of the Supreme court was very appreciable as it was based on the humanistic approach where the supreme court became the activist. Although the eviction order were held to be valid, the court ordered to provide the alternative shelter. The right to life was again enlarges to incorporate the right to livelihood into it. The decision in itself paved a way for the reformation of substantive law.

VI. CONCLUSION

In the present case, the Supreme court gave the landmark verdict to incorporate the right to livelihood inside the scope of right to life. The supreme court clearly ruled out that the means of livelihood is the necessity to live and hence the right to livelihood is the basic necessity to fulfill the purpose of right to life. The Hon'ble court also paved a way for the socialist approach and the reformation of substantive law.